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Opinion

\$200.00 on each of the convictions, with an alternative penalty that if the fines were not paid, he should be imprisoned for thirty days upon one of the convictions, and for a day each upon the other convictions, which terms of imprisonment were to run consecutively.

10 The facts, briefly, are as follows: The prosecutor is the manager of the Atlantic Amusement Company, which operates an amusement pier in Atlantic City known as the Steeplechase Pier. On this pier there are a number of amusements, all of which are operated by the Atlantic Amusement Company under the management of the prosecutor. A fee of twenty-five cents is charged for admission to the pier, and none of the amusements can be used by any person who has not paid the twenty-five cents admission. The offenses for which the prosecutor was convicted took place on the same day, namely, the 26th day of July, 1915, the evidence being obtained by two policemen who purchased admission tickets and paid twenty-five cents each for the same.

20 There are a number of amusement devices on the pier to the use and enjoyment of which everyone who has paid an admission fee is entitled without the payment of any extra fee except the Shooting Gallery, the Johnson Family, (which is a species of Hit-the-Baby-Game), the Ferris Wheel, and the Merry-go-Round, for the use of which an extra fee is charged.

30 The prosecutor was convicted of operating the four above named devices, and also of operating a device known as the Razzle Dazzle, for the enjoyment of which no extra fee was charged.

The prosecutor assigns nineteen reasons why the convictions and ordinances should be set aside. These reasons may be briefly summarized as follows:—

Opinion

1. There should have been only one conviction for the violation of the ordinance in question.

2. The ordinance is invalid because it exempts from its operation moving picture shows and musical concerts.

3. The City of Atlantic City has no power under its charter to increase the statutory penalty for operating or conducting amusements on Sunday.

4. The operation of the amusements in question by the prosecutor is not a violation of the ordinance. 10
Before Justices Garrison, Trenchard and Black.

For the prosecutor, Bourgeois & Coulomb, Esqs.

For the defendant, Theodore W. Schimpf, Esq.

The opinion of the Court was delivered by Garrison, J.

The first reason for reversal is that there should have been only one conviction. The argument in support of this reason is based upon the assumption that the ordinance forbids the desecration of the Sabbath by the 20 doing of any of the enumerated things, in which case, as the decisions hold, the ordinance is as much violated by any one of the acts mentioned as it would be by them all. The present ordinance is, however, not of that sort, but, on the contrary, prohibits Sunday dancing, Sunday nine pins, etc., each specifically and according to the same qualifications. It is as if a man should keep open two saloons for Sunday selling, for which, of course, there could be two convictions.

The second reason is because the ordinance excepts 30 musical concerts and moving picture shows. The exception occurs in the amendment to the ordinance approved May 14, 1915. Hence if such amendment is

Opinion

bad because of the exception, the original ordinance is in force and covers the convictions. It is unnecessary, therefore, to stop to inquire why a city ordinance would be invalid if it did not re-enact the vice and immorality statute in toto. The effect of the exception does not alter the statutory situation,—with the effect of licensing Sunday shows, considered in *Singer vs. Newark* (79 N. J. L. 386), we have no present concern.

10 Third. The penalty provided by the ordinance is within the power conferred by Pamp. Laws, 1902, sec. 14, et seq.

Atlantic City vs. France, 75 N. J. L. 910.

Fourth. The operation of the amusements in question was a violation of the ordinance.

No other reason is argued.

The convictions brought up by the writ are affirmed.

20

30

Order of Affirmance

ORDER OF AFFIRMANCE.

(Filed March 9, 1916.)

NEW JERSEY SUPREME COURT.

WILLIAM H. FENNAN,

Prosecutor,

vs.

CITY OF ATLANTIC CITY AND

EDMUND C. GASKILL, JR.,

RECORDER,

Defendants.

ON CERTIORARI.
ORDER AFFIRMING
CONVICTION.
CASE No. 1.

10

This cause having been argued at the November term of this Court, by Bourgeois & Coulomb, Esquires, of counsel for prosecutor, and Theodore W. Schimpf, Esquire, of counsel for the defendant, and the Court having considered the same and finding no error in the record or proceedings of the judgment of conviction of the prosecutor before the Recorder of Atlantic City, New Jersey,

20

It is, Thereupon, Ordered and Adjudged that the judgment of conviction and the proceedings upon which said conviction was had, removed by writ of certiorari in this cause, be affirmed with costs.

On motion of

THEO. W. SCHIMPF,
Attorney of Defendants.

30

Rule actually entered March 9th, 1916.

Order of Affirmance

ORDER OF AFFIRMANCE.

(Filed March 9, 1916.)

NEW JERSEY SUPREME COURT.

10	WILLIAM H. FENNAN, <i>Prosecutor,</i>	} ON CERTIORARI. ORDER AFFIRMING CONVICTION. CASE NO. 2.
	vs.	
	CITY OF ATLANTIC CITY AND EDMUND C. GASKILL, JR., RECORDER,	
	<i>Defendants.</i>	

20 This cause having been argued at the November term of this Court, by Bourgeois & Coulomb, Esquires, of counsel for prosecutor, and Theodore W. Schimpf, Esquire, of counsel for the defendant, and the Court having considered the same and finding no error in the record or proceedings of the judgment of conviction of the prosecutor before the Recorder of Atlantic City, New Jersey,

It is, Thereupon, Ordered and Adjudged that the judgment of conviction and the proceedings upon which said conviction was had, removed by writ of certiorari in this cause, be affirmed with costs.

30 On motion of

THEO. W. SCHIMPF,
Attorney of Defendants.

Rule actually entered March 9th, 1916.

Order of Affirmance

ORDER OF AFFIRMANCE.

(Filed March 9, 1916.)

NEW JERSEY SUPREME COURT.

WILLIAM H. FENNAN,

Prosecutor,

vs.

CITY OF ATLANTIC CITY AND

EDMUND C. GASKILL, JR.,

RECORDER,

Defendants.

ON CERTIORARI.
ORDER AFFIRMING
CONVICTION.
CASE NO. 3.

10

This cause having been argued at the November term of this Court, by Bourgeois & Coulomb, Esquires, of counsel for prosecutor, and Theodore W. Schimpf, Esquire, of counsel for the defendant, and the Court having considered the same and finding no error in the record or proceedings of the judgment of conviction of the prosecutor before the Recorder of Atlantic City, New Jersey,

20

It is, Thereupon, Ordered and Adjudged that the judgment of conviction and the proceedings upon which said conviction was had, removed by writ of certiorari in this cause, be affirmed with costs.

On motion of

THEO. W. SCHIMPF,

Attorney of Defendants.

30

Rule actually entered March 9th, 1916.

Order of Affirmance

ORDER OF AFFIRMANCE.

(Filed March 9, 1916.)

NEW JERSEY SUPREME COURT.

10	WILLIAM H. FENNAN, <i>Prosecutor,</i>	} ON CERTIORARI. ORDER AFFIRMING CONVICTION. CASE No. 4.
	vs.	
	CITY OF ATLANTIC CITY AND EDMUND C. GASKILL, JR., RECORDER,	
	<i>Defendants.</i>	

20 This cause having been argued at the November term of this Court, by Bourgeois & Coulomb, Esquires, of counsel for prosecutor, and Theodore W. Schimpf, Esquire, of counsel for the defendant, and the Court having considered the same and finding no error in the record or proceedings of the judgment of conviction of the prosecutor before the Recorder of Atlantic City, New Jersey,

It is, Thereupon, Ordered and Adjudged that the judgment of conviction and the proceedings upon which said conviction was had, removed by writ of certiorari in this cause, be affirmed with costs.

30 On motion of

THEO. W. SCHIMPF,
Attorney of Defendants.

Rule actually entered March 9th, 1916.

Order of Affirmance

ORDER OF AFFIRMANCE.

(Filed March 9, 1916.)

NEW JERSEY SUPREME COURT.

WILLIAM H. FENNAN,

Prosecutor,

vs.

CITY OF ATLANTIC CITY AND

EDMUND C. GASKILL, JR.,

RECORDER,

Defendants.

ON CERTIORARI. 10
ORDER AFFIRMING
CONVICTION.
CASE No. 5.

This cause having been argued at the November term of this Court, by Bourgeois & Coulomb, Esquires, of counsel for prosecutor, and Theodore W. Schimpf, Esquire, of counsel for the defendant, and the Court having considered the same and finding no error in the record or proceedings of the judgment of conviction of the prosecutor before the Recorder of Atlantic City, New Jersey, 20

It is, Thereupon, Ordered and Adjudged that the judgment of conviction and the proceedings upon which said conviction was had, removed by writ of certiorari in this cause, be affirmed with costs.

On motion of

THEO. W. SCHIMPF,
Attorney of Defendants.

30

Rule actually entered March 9th, 1916.

Notice of Appeal

NOTICE OF APPEAL.

(Served March 15, 1916. Filed March 16, 1916.)

NEW JERSEY SUPREME COURT.

10	WILLIAM H. FENNAN, <i>Prosecutor,</i>	}	ON CERTIORARI. NOTICE OF APPEAL. CASE No. 1.
	vs.		
	CITY OF ATLANTIC CITY AND EDMUND C. GASKILL, JR., RECORDER,		
	<i>Defendants.</i>		

20 To Theodore W. Schimpf, Esq., Attorney for Defendants:

TAKE NOTICE that the prosecutor appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above stated cause.

BOURGEOIS & COULOMB,
Attorneys for Prosecutor.

30 Same notice served in cases Nos. 2, 3, 4 and 5 and omitted from printed book by consent.

Grounds of Appeal

GROUNDS OF APPEAL.

(Served April 6, 1916. Filed April 7, 1916.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

WILLIAM H. FENNAN,

Prosecutor-Appellant,

vs.

CITY OF ATLANTIC CITY AND

EDMUND C. GASKILL, JR.,

RECORDER,

Defendants-Respondents.

10

ON APPEAL.

GROUNDS OF APPEAL

CASES No. 1, 2, 3,

4 AND 5.

20

The prosecutor-appellant states the following grounds of appeal:

1. Because the prosecutor-appellant was convicted of five different offenses and violations of said ordinance whereas if there should have been any conviction, there should only have been one conviction, the five offenses complained of amounting to but one violation of this ordinance.

2. (Case No. 1.) Because the operation of a Shooting Gallery was not a violation of the ordinance. 30

(Case No. 2.) Because the operation of a "Johnson Family" was not a violation of the ordinance.

Grounds of Appeal

(Case No. 3.) Because the operation of a Ferris Wheel was not a violation of the ordinance.

(Case No. 4.) Because the operation of a Merry-go-Round was not a violation of the ordinance.

(Case No. 5.) Because the operation of a Razzle Dazzle was not a violation of the ordinance.

10 3. Because said amusement devices which it is alleged the prosecutor-appellant operated are on the private property of the Atlantic Amusement Company, of which the prosecutor is manager.

4. Because the ordinance is in violation of the Constitution of New Jersey and the Constitution of the United States, in that it excepts moving picture shows and musical concerts from its operation.

20 5. Said ordinance is invalid because it excepts from its provisions moving picture shows and musical concerts, whereas the Vice and Immorality Act of the State of New Jersey prohibits moving picture shows and musical concerts from being performed on the Christian Sabbath, on the first day of the week, commonly called Sunday.

6. Because said ordinance is class legislation in that it excepts from its provisions musical concerts and moving picture shows.

30 7. Because the prosecutor-appellant was subjected to five separate convictions for the operation of certain amusement devices on the Steeplechase Pier in Atlantic City on the first day of the week, commonly known as Sunday, of which the conviction hereby appealed from is one, whereas there should have only been one conviction because one admission is charged to the Steeplechase Pier owned by the Atlantic Amusement

Grounds of Appeal

Company, upon which all the amusements in question were operated, and the payment of that admission entitles the person admitted to the use of all of the amusements complained of, and therefore, if there could be any conviction, there could only be one conviction under said ordinance.

8. Because the City of Atlantic City has no right under its charter to pass ordinances in violation of the Constitution and statutes of the State of New Jersey or the Constitution of the United States. 10

9. Because the City of Atlantic City under its charter powers has no right to pass ordinances attempting to regulate or prohibit Sunday amusements.

10. Because the City of Atlantic City, under its charter powers has no right to pass ordinances to regulate matters already regulated and provided for by the statutes of the State of New Jersey.

11. Because the City of Atlantic City, under its charter powers, has no right to pass ordinances to regulate matters already regulated and provided for by the statutes of the State of New Jersey in a manner different from that provided for in the statutes of the State of New Jersey concerning such matters. 20

12. Because there could be but one violation of said ordinance by any one person on any one Sunday.

13. Because the gist of the offense is the violation of the sanctity of the Christian Sabbath, commonly called Sunday, and there can be but one violation of that sanctity by any one person on any one day. 30

14. Because said ordinance and conviction abridges the privileges and immunities which the prosecutor-

Grounds of Appeal

appellant is entitled to under the first section of Article 14 of the United States Constitution.

15. Because said ordinance and conviction deprives prosecutor-appellant of his liberty and property without due process of law, in violation of Section 1 of Article 14 of the Constitution of the United States.

16. Because said ordinance and conviction denies to the prosecutor-appellant the equal protection of the laws, in violation of Section 1 of Article 14 of the Constitution of the United States.

17. Because said ordinance is in divers other respects illegal and oppressive.

18. Because said conviction is in divers other respects illegal and oppressive.

BOURGEOIS & COULOMB,
Attorneys for Prosecutor-Appellant.

20 I consent to the printing of the reasons in cases Nos. 1, 2, 3, 4, and 5 in the above form.

HARRY WOOTTON,
Atty. for City of Atlantic City.

WRIT OF CERTIORARI, CASE NO. 1.

NEW JERSEY, ss.

THE STATE OF NEW JERSEY To
(Seal) Edmund C. Gaskill, Jr., Recorder of At-
lantic City, and Atlantic City, a municipal
corporation of the State of New Jersey, Greeting: 10

We being willing for certain reasons to be certified
of a certain ordinance entitled, "An Ordinance for
the Suppression of Vice and Immorality," approved
August 13, 1901, and the amendment thereto entitled,
"An Ordinance to amend Section 2 of an ordinance
entitled, 'An Ordinance for the Suppression of Vice
and Immorality,' approved August 13, 1901," which
amendment was approved September 14, 1909, and
the further amendment thereto entitled, "An Ordinance
to amend an ordinance entitled, 'An Ordinance 20
for the Suppression of Vice and Immorality,' ap-
proved August 13, 1901," which amendment was ap-
proved May 14, 1915, and a certain conviction, order
and proceeding thereunder given or made before
Edmund C. Gaskill, Jr., Recorder, on the twenty-
eighth day of July, A. D. nineteen hundred and
fifteen, in a certain proceeding for the alleged viola-
tion of said ordinance entitled, "An Ordinance for
the Suppression of Vice and Immorality," approved
August 13, 1901, and the amendments thereof as 30
above set forth, at the suit of Atlantic City against
William H. Fennan, wherein the said William H.
Fennan was convicted of having operated a certain
amusement device on the Steeplechase Pier in Atlan-
tic City known as the "Shooting Gallery," on the
first day of the week, commonly known as Sunday,

do hereby command you that you severally send under your seal to the Justices of our Supreme Court of Judicature, at Trenton, on the day of November, nineteen hundred and fifteen, the aforesaid conviction, order and proceedings, with all things touching and concerning the same, as well as the said ordinance and amendments thereto, with the proceedings of the City Commission of Atlantic City touching the introduction, passing and publishing of said ordinance, together with all things touching and concerning them, as fully and entirely as they before you severally remain, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

WITNESS, William S. Gummere, Chief Justice of our Supreme Court at Trenton, the sixth day of Aug., A. D. 1915, nineteen hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

BOURGEOIS & COULOMB,
Attorneys of Prosecutor.

[ENDORSED]

NO. 1.
NEW JERSEY SUPREME COURT.

William H. Fennan,
Prosecutor,

vs.

City of Atlantic City and Edmund C.
Gaskill, Jr., Recorder,
Defendants.

WRIT OF CERTIORARI.

Ret'ble Aug. 26, 1915.
Bourgeois & Coulomb,
Attys. of Prosecutor.

This writ is allowed. Let it be sealed.
Upon condition that the prosecutor enter into and file a bond to abide by the judgment of the Court to be approved in form and sufficiency by the Solicitor of the City of Atlantic City, N. J.
Dated July 30, 1915.

10

Chas. C. Black,
J. S. C.

Bond filed and approved as to form and sufficiency and service of within writ acknowledged Aug. 5, 1915.

Theo. W. Schimpf,
City Solr.
By Jas. M. Sheen,
Ass. City Solr.

20

Service acknowledged 8/7/'15.
Edmund C. Gaskill, Jr.,
Recorder of Atlantic City.

30

WRIT OF CERTIORARI, CASE NO. 2.

NEW JERSEY, ss.

THE STATE OF NEW JERSEY To
(Seal) Edmund C. Gaskill, Jr., Recorder of Atlantic City, and Atlantic City, a municipal

10 corporation of the State of New Jersey, Greeting:

We being willing for certain reasons to be certified of a certain ordinance entitled, "An Ordinance for the Suppression of Vice and Immorality," approved August 13, 1901, and the amendment thereto entitled, "An Ordinance to amend Section 2 of an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13, 1901," which amendment was approved September 14, 1909, and the further amendment thereto entitled, "An Ordinance to amend an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13, 1901," which amendment was approved May 14, 1915, and a certain conviction, order and proceeding thereunder given or made before Edmund C. Gaskill, Jr., Recorder, on the twenty-eighth day of July, A. D. nineteen hundred and fifteen, in a certain proceeding for the alleged violation of said ordinance entitled, "An Ordinance for the Suppression of Vice and Immorality," approved August 13, 1901, and the amendments thereof as above set forth, at the suit of Atlantic City against William H. Fennan, wherein the said William H. Fennan was convicted of having operated a certain amusement device on the Steeplechase Pier in Atlantic City known as the "Johnson Family" on the first day of the week, commonly known as Sunday,

20
30

do hereby command you that you severally send under your seal to the Justices of our Supreme Court of Judicature, at Trenton, on the twenty-sixth day of November, nineteen hundred and fifteen, the aforesaid conviction, order and proceedings, with all things touching and concerning the same, as well as the said ordinance and amendments thereto, with the proceedings of the City Commission of Atlantic City touching the introduction, passing and publishing of said ordinance, together with all things touching and concerning them, as fully and entirely as they before you severally remain, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done. 10

WITNESS, William S. Gummere, Chief Justice of our Supreme Court at Trenton, the sixth day of Aug., A. D. nineteen hundred and fifteen.

WM. C. GEBHARDT,

Clerk. 20

BOURGEOIS & COULOMB,
Attorneys of Prosecutor.

[ENDORSED]

NO. 2.
NEW JERSEY SUPREME COURT.

William H. Fennan,
Prosecutor,

vs.

City of Atlantic City and Edmund C.
Gaskill, Jr., Recorder,
Defendants.

30

WRIT OF CERTIORARI.

Ret'ble Aug. 26, 1915.
Bourgeois & Coulomb,
Attys. of Prosecutor.

10 This writ is allowed. Let it be sealed.
Upon condition that the prosecutor enter into and file a bond to abide by the judgment of the Court to be approved in form and sufficiency by the Solicitor for the City of Atlantic City, N. J.
Dated July 30, 1915.

Chas. C. Black,
J. S. C.

20 Bond filed and approved as to form and sufficiency and service of writ acknowledged Aug. 5, 1915.

Theo. W. Schimpf,
City Solr.
By Jas. M. Sheen,
Ass. City Solr.

Service acknowledged 8/7/'15.
Edmund C. Gaskill, Jr.,
Recorder of Atlantic City.

WRIT OF CERTIORARI, CASE NO. 3.

NEW JERSEY, ss.

THE STATE OF NEW JERSEY To
(Seal) Edmund C. Gaskill, Jr., Recorder of Atlantic City, and Atlantic City, a municipal corporation of the State of New Jersey, Greeting: 10

We being willing for certain reasons to be certified of a certain ordinance entitled, "An Ordinance for the Suppression of Vice and Immorality," approved August 13, 1901, and the amendment thereto entitled, "An Ordinance to amend Section 2 of an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13, 1901," which amendment was approved September 14, 1909, and the further amendment thereto entitled, "An Ordinance to amend an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13, 1901," which amendment was approved May 14, 1915, and a certain conviction, order and proceeding thereunder given or made before Edmund C. Gaskill, Jr., Recorder, on the twenty-eighth day of July, A. D. nineteen hundred and fifteen, in a certain proceeding for the alleged violation of said ordinance entitled, "An Ordinance for the Suppression of Vice and Immorality," approved August 13, 1901, and the amendments thereof as above set forth, at the suit of Atlantic City against William H. Fennan, wherein the said William H. Fennan was convicted of having operated a certain amusement device on the Steeplechase Pier in Atlantic City known as the "Ferris Wheel," on the first day of the week, commonly known as Sunday, 20 30

do hereby command you that you severally send under your seal to the Justices of our Supreme Court of Judicature, at Trenton, on the twenty-sixth day of November, nineteen hundred and fifteen, the aforesaid conviction, order and proceedings, with all things touching and concerning the same, as well as the said ordinance and amendments thereto, with the proceedings of the City Commission of Atlantic City touching the introduction, passing and publishing of said ordinance, together with all things touching and concerning them, as fully and entirely as they before you severally remain, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

WITNESS, William S. Gummere, Chief Justice of our Supreme Court at Trenton, the sixth day of Aug., A. D. nineteen hundred and fifteen.

WM. C. GEBHARDT,

Clerk.

BOURGEOIS & COULOMB,
Attorneys of Prosecutor.

[ENDORSED]

NO. 3.

NEW JERSEY SUPREME COURT.

William H. Fennan,
Prosecutor,

vs.

City of Atlantic City and Edmund C.
Gaskill, Jr., Recorder,
Defendants.

WRIT OF CERTIORARI.

Ret'ble Aug. 26, 1915.
Bourgeois & Coulomb,
Attys. of Prosecutor.

This writ is allowed. Let it be sealed.
Upon condition that the prosecutor enter into and file a bond to abide by the judgment of the Court to be approved in form and sufficiency by the Solicitor for the City of Atlantic City, N. J.
Dated July 30, 1915.

10

Chas. C. Black,
J. S. C.

Bond filed and approved as to form and sufficiency and service of within writ acknowledged Aug. 5, 1915.

Theo. W. Schimpf,
City Solr.

20

By Jas. M. Sheen,
Ass. City Solr.

Service acknowledged 8/7/'15.
Edmund C. Gaskill, Jr.,
Recorder of Atlantic City.

30

WRIT OF CERTIORARI, CASE NO. 4.

NEW JERSEY, ss.

THE STATE OF NEW JERSEY To
(Seal) Edmund C. Gaskill, Jr., Recorder of Atlantic City, and Atlantic City, a municipal
10 corporation of the State of New Jersey, Greeting:

We being willing for certain reasons to be certified of a certain ordinance entitled, "An Ordinance for the Suppression of Vice and Immorality," approved August 13, 1901, and the amendment thereto entitled, "An Ordinance to amend Section 2 of an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13, 1901," which amendment was approved September 14, 1909, and the further amendment thereto entitled, "An Ordinance to amend an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13, 1901," which amendment was approved May 14, 1915, and a certain conviction, order and proceeding thereunder given or made before Edmund C. Gaskill, Jr., Recorder, on the twenty-eighth day of July, A. D. nineteen hundred and fifteen, in a certain proceeding for the alleged violation of said ordinance entitled, "An Ordinance for the Suppression of Vice and Immorality," approved
20 August 13, 1901, and the amendments thereof as above set forth, at the suit of Atlantic City against William H. Fennan, wherein the said William H. Fennan was convicted of having operated a certain amusement device on the Steeplechase Pier in Atlantic City known as the "Merry-go-Round," on the first day of the week, commonly known as Sunday,
30

do hereby command you that you severally send under your seal to the Justices of our Supreme Court of Judicature, at Trenton, on the twenty-sixth day of November, nineteen hundred and fifteen, the aforesaid conviction, order and proceedings, with all things touching and concerning the same, as well as the said ordinance and amendments thereto, with the proceedings of the City Commission of Atlantic City touching the introduction, passing and publishing of said ordinance, together with all things touching and concerning them, as fully and entirely as they before you severally remain, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done. 10

WITNESS, William S. Gummere, Chief Justice of our Supreme Court at Trenton, the sixth day of Aug., A. D. nineteen hundred and fifteen.

WM. C. GEBHARDT,

Clerk. 20

BOURGEOIS & COULOMB,
Attorneys of Prosecutor.

[ENDORSED]

NO. 4.
NEW JERSEY SUPREME COURT.

William H. Fennan,
Prosecutor,

vs.

City of Atlantic City and Edmund C.
Gaskill, Jr., Recorder,
Defendants.

30

WRIT OF CERTIORARI.

Ret'ble Aug. 26, 1915.
Bourgeois & Coulomb,
Attys. of Prosecutor.

10 This writ is allowed. Let it be sealed.
Upon condition that the prosecutor enter into and file a bond to abide by the judgment of the Court to be approved in form and sufficiency by the Solicitor for the City of Atlantic City, N. J.
Dated July 30, 1915.

Chas. C. Black,
J. S. C.

20 Bond filed and approved as to form and sufficiency and service of within writ acknowledged Aug. 5, 1915.

Theo. W. Schimpf,
City Solr.
By Jas. M. Sheen,
Ass. City Solr.

Service acknowledged 8/7/'15.
Edmund C. Gaskill, Jr.,
Recorder of Atlantic City.

WRIT OF CERTIORARI, CASE NO. 5.

NEW JERSEY, ss.

THE STATE OF NEW JERSEY To
(Seal) Edmund C. Gaskill, Jr., Recorder of At-
lantic City, and Atlantic City, a municipal
corporation of the State of New Jersey, Greeting: 10

We being willing for certain reasons to be certified
of a certain ordinance entitled, "An Ordinance for
the Suppression of Vice and Immorality," approved
August 13, 1901, and the amendment thereto entitled,
"An Ordinance to amend Section 2 of an ordinance
entitled, 'An Ordinance for the Suppression of Vice
and Immorality,' approved August 13, 1901," which
amendment was approved September 14, 1909, and
the further amendment thereto entitled, "An Ordi-
nance to amend an ordinance entitled, 'An Ordinance 20
for the Suppression of Vice and Immorality,' ap-
proved August 13, 1901," which amendment was ap-
proved May 14, 1915, and a certain conviction, order
and proceeding thereunder given or made before
Edmund C. Gaskill, Jr., Recorder, on the twenty-
eighth day of July, A. D. nineteen hundred and
fifteen, in a certain proceeding for the alleged viola-
tion of said ordinance entitled, "An Ordinance for
the Suppression of Vice and Immorality," approved
August 13, 1901, and the amendments thereof as 30
above set forth, at the suit of Atlantic City against
William H. Fennan, wherein the said William H.
Fennan was convicted of having operated a certain
amusement device on the Steeplechase Pier in Atlan-
tic City known as the "Razzle-Dazzle," on the
first day of the week, commonly known as Sunday,

do hereby command you that you severally send under your seal to the Justices of our Supreme Court of Judicature, at Trenton, on the twenty-sixth day of November, nineteen hundred and fifteen, the aforesaid conviction, order and proceedings, with all things touching and concerning the same, as well as the said ordinance and amendments thereto, with the proceedings of the City Commission of Atlantic City touching the introduction, passing and publishing of said ordinance, together with all things touching and concerning them, as fully and entirely as they before you severally remain, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

WITNESS, William S. Gummere, Chief Justice of our Supreme Court at Trenton, the sixth day of Aug., A. D. nineteen hundred and fifteen.

WM. C. GEBHARDT,
Clerk.

BOURGEOIS & COULOMB,
Attorneys of Prosecutor.

[ENDORSED]

NO. 5.

NEW JERSEY SUPREME COURT.

William H. Fennan,
Prosecutor,

vs.

City of Atlantic City and Edmund C.
Gaskill, Jr., Recorder,
Defendants.

WRIT OF CERTIORARI.

Ret'ble Aug. 26, 1915.
Bourgeois & Coulomb,
Attys. of Prosecutor.

This writ is allowed. Let it be sealed.
Upon condition that the prosecutor enter into and file a bond to abide by the judgment of the Court to be approved as to form and sufficiency by the Solicitor of the City of Atlantic City, N. J.
Dated July 30, 1915.

10

Chas. C. Black,
J. S. C.

Bond filed and approved as to form and sufficiency and service of within writ acknowledged Aug. 5, 1915.

Theo. W. Schimpf,
City Solr.
By Jas. M. Sheen,
Ass. City Solr.

20

Service acknowledged 8/7/'15.
Edmund C. Gaskill, Jr.,
Recorder of Atlantic City.

30

RETURN, CASE NO. 1.

(Filed Sept. 14, 1915)

NEW JERSEY SUPREME COURT.

10

WILLIAM FENNAN,
Prosecutor,

VS.

CITY OF ATLANTIC CITY AND
 EDMUND C. GASKILL, JR.,
 Recorder,
Defendants.

ON CERTIORARI.

RETURNED.

CASE No. 1.

20

STATE OF NEW JERSEY,
 COUNTY OF ATLANTIC,
 CITY OF ATLANTIC CITY. } ss.

I, EDMUND C. GASKILL, JR., Recorder of the City of Atlantic City, in the County of Atlantic, State of New Jersey, do hereby certify that the within record is a true copy of the docket of the City of Atlantic City vs. William Fennan, as taken from and compared with the original now on file in the Recorder's Court of Atlantic City, New Jersey.

In witness whereof I have hereunto set my hand and seal this 28th day of August, A. D. nineteen hundred and fifteen.

EDMUND C. GASKILL, JR.,
Recorder of the City of Atlantic City,
New Jersey.

RECORDER'S COURT
Of the City of Atlantic City, N. J.

Before EDMUND C. GASKILL, JR., Recorder.

STATE OF NEW JERSEY,
ATLANTIC COUNTY,
ATLANTIC CITY.

{ ss.

10

Atlantic City,
vs.
William Fennan,
Defendant.

20

APPEARANCES:

Att'y for City, JAS. M. SHEEN, ESQ.
Att'y for Def't, HARRY COULOMB, ESQ.

Be It Remembered, that on the 27th day of July,
A. D. 1915, at Atlantic City aforesaid, before me,
Edmund C. Gaskill, Jr., Recorder of the City of
Atlantic City aforesaid, came Charles N. Apple and
complained and made oath that on or about the 25th
day of July, A. D. 1915, at Atlantic City, said day

30

being a Christian Sabbath or the first day of the week commonly called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, one William Fennan, an employee of the Atlantic Amusement Company, did assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company of a certain amusement commonly called or known as a SHOOT-
ING GALLERY, in a place of public entertainment,
10 within the City of Atlantic City aforesaid, to wit: in that place of public entertainment commonly called or known as Steeplechase Pier, all of which is contrary to the provisions of Section One of an ordinance entitled, "An Ordinance to amend an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13th, 1901," which said amendment was passed by the Board of Commissioners of Atlantic City, on May 13th, 1915, and approved May 14th, 1915.

20 I did, therefore, issue my warrant for the arrest of the said defendant to answer to the said charge, and delivered the same to Charles N. Apple, of the City of Atlantic City for execution. Afterwards, to wit: on the 28th day of July, A. D. 1915, at the hour of three o'clock P. M., the said warrant having been returned into court by the said officer, with the defendant, I read the complaint to the said defendant, said defendant then and there being present, and said defendant being called on to plead, pleaded
30 not guilty.

Thereupon, the following persons were sworn and testified to the following effect: The testimony was taken by a stenographer who was sworn to faithfully take and transcribe the same and is hereto annexed and made a part hereof.

Thereupon, I, the said Edmund C. Gaskill, Jr.,

Recorder of the City of Atlantic City, upon the testimony of creditable witnesses aforesaid, having duly considered the same and the weight to which each party's testimony was entitled, did find the defendant to be guilty of the offense charged, and did adjudge that said defendant, William Fennan, was in the employ of the Atlantic Amusement Company on the 25th day of July, 1915, said day being a Christian Sabbath, or the first day of the week, commonly called Sunday, within the City of Atlantic City, 10 County of Atlantic and State of New Jersey, and did on that day assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company, of a certain amusement, commonly called or known as a SHOOTING GALLERY, in a place of public entertainment within the City of Atlantic City, aforesaid, to wit: in that place of public entertainment commonly called or known as Steeplechase Pier, as set forth in the complaint and testified to by the witnesses in violation of said section and 20 ordinance.

And I do adjudge said defendant, William Fennan, guilty on the charge as laid in the complaint, and I do adjudge that the said defendant, William Fennan, pay the fine of \$200.00, or in default thereof, be committed to the county jail for a period of thirty days.

In Witness Whereof, I, Edmund C. Gaskill, Jr., Recorder of the City of Atlantic City, New Jersey, to this record of conviction have set my hand and seal at Atlantic City, aforesaid, this twenty-eighth 30 day of July, A. D. 1915.

EDMUND C. GASKILL, JR., (Seal)
Recorder of the City of Atlantic City, N. J.

8764

[INFORMATION]

STATE OF NEW JERSEY,
ATLANTIC COUNTY,
ATLANTIC CITY. } ss.

10

CHARLES N. APPLE, upon his oath informs that on or about the twenty-fifth day of July, A. D. 1915, said day being a Christian Sabbath, or the first day of the week, commonly called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, one William Fennan, an employee of the Atlantic Amusement Company did assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company, of a certain amusement, commonly called or known as a SHOOTING GALLERY, in a place of public entertainment within the City of Atlantic City aforesaid, to wit: in that place of public entertainment, commonly called or known as Steeplechase Pier, all of which is contrary to provisions of Section One of an ordinance of the City of Atlantic City, entitled, "An Ordinance to amend an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13, 1901," which said amendment was passed by the Board of Commissioners of Atlantic City, on May 13th, 1915, and approved May 14th, 1915, and therefore he prays that the said William Fennan may be apprehended, and held to answer said complaint and dealt with as law and justice may require.

CHARLES N. APPLE.

Sworn and subscribed to before me, this 27th day of July, 1915.

EDMUND C. GASKILL, JR.,
Recorder of Atlantic City, N. J.

Date, 7/28/15.

Plea, Not guilty—Guilty.

Disposition, Fine \$200.00, or 30 days in jail in default.

10

(COPY)

An Ordinance for the Suppression of Vice and Immorality.

Section 1. Be it ordained by the City Council of Atlantic City, That no dancing, playing at nine pins, ten pins, bowls or any flip-flop, loop-the-loop, old mill, shooting gallery, weighing scales, knock-down-the-baby games or any other games or amusements or any playing, sports, pastimes or diversions shall be done, performed, used, practiced, carried on or conducted by any person or persons, within the limits of Atlantic City on the Christian Sabbath or the first day of the week commonly called Sunday; and it shall be unlawful for any person or persons to aid or assist as employee, clerk or otherwise in the performing, using, carrying on, practicing or conducting any of the above businesses, games, amusements, pastimes or diversions on the Christian Sabbath or the first day of the week commonly called Sunday. 20 30

Section 2. And be it ordained, That any person or persons, who shall violate any of the provisions

of this ordinance shall upon conviction thereof before the Recorder or other proper officer be subject for each and every offence to a penalty of two hundred dollars or suffer imprisonment in the City or County jail for the term of thirty days or both, at the discretion of the officer before whom such convictions shall be had.

- Section 3. And be it ordained, That an ordinance
10 entitled "An Ordinance prohibiting the exhibition of shows, plays and amusements on Sundays" passed August 11, 1884; an ordinance entitled "An Ordinance for the suppression of vice and immorality" approved August 7, 1890, and that an ordinance entitled "An Ordinance as regards the restraining of the sale of liquor without a license" passed April 30, 1855, and all other ordinances or parts of ordinances inconsistent with this ordinance be and the same are hereby repealed to the extent of such in-
20 consistency, and that this ordinance shall take effect immediately.

Passed at a Regular Meeting of City Council, Aug. 12th, 1901.

HARRY BACHARACH,
President.

Attest:

EMERY D. IRELAN,
City Clerk.

30

Approved Aug. 13th, 1901.

FRANKLIN P. STOY,
Mayor of Atlantic City.

CITY OF ATLANTIC CITY.

(Shield)

Department of City Government.

I, DANIEL H. V. BELL, Clerk of the City of Atlantic City, in the County of Atlantic, State of New Jersey, Do Hereby Certify, that the foregoing is a true copy of an Ordinance passed by the City Council of the City of Atlantic City, on the twelfth day of August, A. D. 1901, and approved by the Mayor of said city on the thirteenth day of August, A. D. 1901, as taken from and compared with the original now on file in the City Clerk's office. And published in the Atlantic City Daily Press, August 21, 1901. 10

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Atlantic City, this tenth day of August, 1915. 20

DANIEL H. BELL,
City Clerk.

Ordinance 39.

City of Atlantic City,
New Jersey.

30

Introduced by Mr. Riddle, May 10, 1909.

An Ordinance to amend Section 2 of an ordinance entitled, "An Ordinance for the suppression of vice and immorality," approved August 13th, 1901.

Section 1. Be it Ordained by the City Council of

Atlantic City, That Section 2 of an ordinance entitled "An Ordinance for the suppression of vice and immorality," approved August 13, 1901, be, and the same is, hereby amended to read as follows:

10 Section 2. And be it Further Ordained, That any person or persons who shall violate any of the provisions of this ordinance shall upon conviction thereof before the Recorder or other proper officer be subject, for each and every offense, to a penalty not exceeding Two hundred dollars or suffer imprisonment in the City or County Jail for a term not exceeding thirty days in default of the payment of said fine.

20 Section 3. And be it Further Ordained, That all ordinances or parts of ordinances inconsistent with this ordinance be, and the same are, hereby repealed to the extent of such inconsistencies; and that this ordinance shall take effect immediately.

Passed at a regular meeting of City Council. Sept. 13, 1909.

Approved September 14, 1909.

FRANKLIN P. STOEY,
Mayor of Atlantic City.

Attest:

EDWARD R. DONNELLY,
City Clerk.

CITY OF ATLANTIC CITY.

(Shield)

Department of City Government.

I, DANIEL H. V. BELL, Clerk of the City of Atlantic City, in the County of Atlantic, State of New Jersey, Do Hereby Certify, that the foregoing is a true copy 10
of an ordinance passed by the City Council of the City of Atlantic City on the thirteenth day of September, A. D. 1909, and approved by the Mayor of said city on the fourteenth day of September, A. D. 1909, as taken from and compared with the original now on file in the City Clerk's office. And that said ordinance was published in the Atlantic City Evening Union, September 16th, 1909.

If Testimony Whereof, I have hereunto set my hand and affixed my official seal at Atlantic City, this 20
tenth day of August, 1915.

DANIEL H. V. BELL,
City Clerk.

Ordinance 16.

City of Atlantic City,
New Jersey.

30

Introduced by Director Bartlett, April 15, 1915.

1 AN ORDINANCE to amend an ordinance en-
2 titled, "An Ordinance for the suppression of vice
3 and immorality," approved August 13, 1901.

1 The Board of Commissioners of the City of
2 Atlantic City do ordain:

1 Section 1. That Section 1 of an ordinance en-
2 titled, "An Ordinance for the suppression of vice
3 and immorality," approved August 13, 1901, be
4 and the same is hereby amended to read as fol-
5 lows:

6 Section 1. That no dancing, playing at nine
10 7 pins, ten pins, bowls or any flip-flop, loop-the-
8 loop, old mill, shooting gallery, carousals, knock-
9 down-the-baby games or any other games or
10 amusements or any theatrical performance, ex-
11 cept only musical concerts and moving picture
12 shows shall be done, performed, used, practiced,
13 carried on or conducted by any person or persons
14 in any place of public entertainment or upon the
15 beach, the public streets or parks or other public
16 places within the limits of Atlantic City on the
20 17 Christian Sabbath or the first day of the week
18 commonly called Sunday, and it shall be unlawful
19 for any person or persons to aid or assist as em-
20 ployee, clerk or otherwise in the performing, us-
21 ing, carrying on, practicing or conducting any of
22 the above businesses, games or amusements on
23 the Christian Sabbath or the first day of the week
24 commonly called Sunday.

1 Section 2. This Ordinance shall take effect im-
30 2 mediately.

Passed at a regular meeting of City Commission,
May 13, 1915. Approved May 14, 1915.

HARRY BACHARACH,
ALBERT BEYER,
WM. H. BARTLETT,
J. B. THOMPSON,

Commissioners of Atlantic City.

Attest:

DANIEL H. V. BELL,
City Clerk.

CITY OF ATLANTIC CITY.

(Shield)

10

Department of City Government.

I, DANIEL H. V. BELL, Clerk of the City of Atlantic City, in the County of Atlantic, State of New Jersey, Do Hereby Certify, that the foregoing is a true copy of an ordinance passed by the Board of Commissioners of the City of Atlantic City, on the thirteenth day of May, A. D. 1915, and approved by the Board of Commissioners of said city, on the fourteenth day of May, 1915, as taken from and compared with the Book of Ordinances now on file in my office. Said ordinance was properly recorded in the Book of Ordinances and signed by a majority of the Board of Commissioners, and published in the Atlantic City Review, May 24, 1915. 20

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Atlantic City, this tenth day of August, 1915.

DANIEL H. V. BELL,
City Clerk. 30

*To the Honorable, the Justices of the Supreme Court
of Judicature of New Jersey:*

In obedience to the command of this writ, to Atlan-

tic City, a municipal corporation of the State of New Jersey, directed, I, Daniel H. V. Bell, Clerk of the City of Atlantic City, do hereby certify and send to you, the Honorable Justices of the Supreme Court of Judicature of New Jersey within named, a certain ordinance entitled, "An Ordinance for the Suppression of Vice and Immorality," approved August 13, 1901, and the amendment thereto entitled, "An Ordinance to amend Section 2 of an ordinance entitled, 10 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13, 1901," which amendment was approved September 14, 1909, and the further amendment thereto entitled, "An Ordinance to amend an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13, 1901," which amendment was approved May 14, 1915, with the proceedings of the City Council and the City Commission of Atlantic City touching the introduction, passing and publishing of said ordi-
20 nances, together with all things touching and concerning them, as fully and entirely as they remain before me.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of the City of Atlantic City this tenth day of August in the year of our Lord, one thousand nine hundred and fifteen.

CITY OF ATLANTIC CITY,

By DANIEL H. V. BELL,

City Clerk.

RETURN, CASE NO. 2.

(Filed Sept. 14, 1915)

NEW JERSEY SUPREME COURT.

10

WILLIAM FENNAN, Prosecutor,	}	ON CERTIORARI.
VS.		RETURNED.
CITY OF ATLANTIC CITY AND EDMUND C. GASKILL, JR., Recorder,		CASE No. 2.
Defendants.		

20

STATE OF NEW JERSEY, COUNTY OF ATLANTIC, CITY OF ATLANTIC CITY.	}	ss.

I, EDMUND C. GASKILL, JR., Recorder of the City of Atlantic City, in the County of Atlantic, State of New Jersey, do hereby certify that the within record is a true copy of the docket of the City of Atlantic City vs. William Fennan, as taken from and compared with the original now on file in the Recorder's Court of Atlantic City, New Jersey. 30

In witness whereof I have hereunto set my hand and seal this 28th day of August, A. D. nineteen hundred and fifteen.

EDMUND C. GASKILL, JR.,
Recorder of the City of Atlantic City,
New Jersey.

RECORDER'S COURT
Of the City of Atlantic City, N. J.

Before EDMUND C. GASKILL, JR., Recorder.

10

STATE OF NEW JERSEY,
ATLANTIC COUNTY, }
ATLANTIC CITY. } ss.

Atlantic City,
vs.
William Fennan,
Defendant.

20

APPEARANCES:

Att'y for City, JAS. M. SHEEN, Esq.
Att'y for Def't, HARRY COULOMB, Esq.

30 Be It Remembered, that on the 27th day of July,
A. D. 1915, at Atlantic City aforesaid, before me,
Edmund C. Gaskill, Jr., Recorder of the City of
Atlantic City aforesaid, came Charles N. Apple and
complained and made oath that on or about the 25th
day of July, A. D. 1915, at Atlantic City, said day
being a Christian Sabbath or the first day of the

week commonly called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, one William Fennan, an employee of the Atlantic Amusement Company, did assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company of a certain amusement commonly called or known as a MERRY-GO-ROUND, in a place of public entertainment, within the City of Atlantic City aforesaid, to wit: in that place of public entertainment commonly called or known as Steeplechase Pier, all of which is contrary to the provisions of Section One of an ordinance entitled, "An Ordinance to amend an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13th, 1901," which said amendment was passed by the Board of Commissioners of Atlantic City, on May 13th, 1915, and approved May 14th, 1915. 10

I did, therefore, issue my warrant for the arrest of the said defendant to answer to the said charge, and delivered the same to Charles N. Apple, of the City of Atlantic City for execution. Afterwards, to wit: on the 28th day of July, A. D. 1915, at the hour of three o'clock P. M., the said warrant having been returned into court by the said officer, with the defendant, I read the complaint to the said defendant, said defendant then and there being present, and said defendant being called on to plead, pleaded not guilty. 20

Thereupon, the following persons were sworn and testified to the following effect: The testimony was taken by a stenographer who was sworn to faithfully take and transcribe the same and is hereto annexed and made a part hereof. 30

Thereupon, I, the said Edmund C. Gaskill, Jr., Recorder of the City of Atlantic City, upon the testi-

mony of creditable witnesses aforesaid, having duly considered the same and the weight to which each party's testimony was entitled, did find the defendant to be guilty of the offense charged, and did adjudge that said defendant, William Fennan, was in the employ of the Atlantic Amusement Company on the 25th day of July, 1915, said day being a Christian Sabbath, or the first day of the week, commonly called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, and did on that day assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company, of a certain amusement, commonly called or known as a MERRY-GO-ROUND, in a place of public entertainment within the City of Atlantic City, aforesaid, to wit: in that place of public entertainment commonly called or known as Steeplechase Pier, as set forth in the complaint and testified to by the witnesses in violation of said section and ordinance.

And I do adjudge said defendant, William Fennan, guilty on the charge as laid in the complaint, and I do adjudge that the said defendant, William Fennan, pay the fine of \$200.00, or in default thereof, be committed to the county jail for a period of one day.

In Witness Whereof, I, Edmund C. Gaskill, Jr., Recorder of the City of Atlantic City, New Jersey, to this record of conviction have set my hand and seal at Atlantic City, aforesaid, this twenty-eighth day of July, A. D. 1915.

EDMUND C. GASKILL, JR., (Seal)
Recorder of the City of Atlantic City, N. J.

8765

[INFORMATION]

STATE OF NEW JERSEY, }
ATLANTIC COUNTY, } ss.
ATLANTIC CITY.

10

CHARLES N. APPLE, upon his oath informs that on or about the twenty-fifth day of July, A. D. 1915, at the City of Atlantic City aforesaid, said day being a Christian Sabbath, or the first day of the week, commonly called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, one William Fennan, an employee of the Atlantic Amusement Company did assist as such employee, 20 in the carrying on and conducting by the said Atlantic Amusement Company, of a certain amusement, commonly called or known as a MERRY-GO-ROUND, in a place of public entertainment within the City of Atlantic City aforesaid, to wit: in that place of public entertainment, commonly called or known as Steeplechase Pier, all of which is contrary to Section One of an ordinance of the City of Atlantic City, entitled, "An Ordinance to amend an ordinance entitled, 'An Ordinance for the 30 Suppression of Vice and Immorality,' approved August 13, 1901," which said amendment was passed by the Board of Commissioners of Atlantic City, on May 13th, 1915, and approved May 14th, 1915, and therefore he prays that the said William Fennan may be apprehended, and held to answer

to said complaint and dealt with as law and justice may require.

CHARLES N. APPLE.

Sworn and subscribed to before me, this 27th day of July, 1915.

EDMUND C. GASKILL, JR.,
Recorder of Atlantic City, N. J.

10 Date, 7/28/15.

Plea, Not guilty—Guilty.

Disposition, Fine \$200.00, or one day in jail.

RETURN, CASE NO. 3.

(Filed Sept. 14, 1915)

NEW JERSEY SUPREME COURT.

WILLIAM FENNAN,
Prosecutor,

vs.

CITY OF ATLANTIC CITY AND
EDMUND C. GASKILL, JR.,
Recorder,
Defendants.

ON CERTIORARI.

RETURNED.

CASE No. 3.

10

STATE OF NEW JERSEY,
COUNTY OF ATLANTIC,
CITY OF ATLANTIC CITY. } ss.

I, EDMUND C. GASKILL, JR., Recorder of the City of Atlantic City, in the County of Atlantic, State of New Jersey, do hereby certify that the within record is a true copy of the docket of the City of Atlantic City vs. William Fennan, as taken from and compared with the original now on file in the Recorder's Court of Atlantic City, New Jersey. 30

In witness whereof I have hereunto set my hand and seal this 28th day of August, A. D. nineteen hundred and fifteen.

EDMUND C. GASKILL, JR.,
Recorder of the City of Atlantic City,
New Jersey.

20

RECORDER'S COURT
Of the City of Atlantic City, N. J.

Before EDMUND C. GASKILL, JR., Recorder.

10

STATE OF NEW JERSEY,
ATLANTIC COUNTY, }
ATLANTIC CITY. } ss.

20

Atlantic City,
vs.
William Fennan,
Defendant.

APPEARANCES:

Att'y for City, JAS. M. SHEEN, ESQ.
Att'y for Def't, HARRY COULOMB, ESQ.

30 Be It Remembered, that on the 27th day of July, A. D. 1915, at Atlantic City aforesaid, before me, Edmund C. Gaskill, Jr., Recorder of the City of Atlantic City aforesaid, came Charles N. Apple and complained and made oath that on or about the 25th day of July, A. D. 1915, at Atlantic City, said day being a Christian Sabbath or the first day of the

week commonly called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, one William Fennan, an employee of the Atlantic Amusement Company, did assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company of a certain amusement commonly called or known as JOHNSON FAMILY,—throw three balls at head of man—in a place of public entertainment, within the City of Atlantic City aforesaid, to wit: in that place of public entertainment commonly called or known as Steeplechase Pier, all of which is contrary to the provisions of Section One of an ordinance entitled, “An Ordinance to amend an ordinance entitled, ‘An Ordinance for the Suppression of Vice and Immorality,’ approved August 13th, 1901,” which said amendment was passed by the Board of Commissioners of Atlantic City, on May 13th, 1915, and approved May 14th, 1915. 10

I did, therefore, issue my warrant for the arrest of the said defendant to answer to the said charge, and delivered the same to Charles N. Apple, of the City of Atlantic City for execution. Afterwards, to wit: on the 28th day of July, A. D. 1915, at the hour of three o’clock P. M., the said warrant having been returned into court by the said officer, with the defendant, I read the complaint to the said defendant, said defendant then and there being present, and said defendant being called on to plead, pleaded not guilty. 20 30

Thereupon, the following persons were sworn and testified to the following effect: The testimony was taken by a stenographer who was sworn to faithfully take and transcribe the same and is hereto annexed and made a part hereof.

Thereupon, I, the said Edmund C. Gaskill, Jr.,

Recorder of the City of Atlantic City, upon the testimony of creditable witnesses aforesaid, having duly considered the same and the weight to which each party's testimony was entitled, did find the defendant to be guilty of the offense charged, and did adjudge that said defendant, William Fennan, was in the employ of the Atlantic Amusement Company on the 25th day of July, 1915, said day being a Christian Sabbath, or the first day of the week, commonly
10 called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, and did on that day assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company, of a certain amusement, commonly called or known as JOHNSON FAMILY—throw three balls at head of man—in a place of public entertainment within the City of Atlantic City, aforesaid, to wit: in that place of public entertainment commonly called or known as Steeplechase Pier, as
20 set forth in the complaint and testified to by the witnesses in violation of said section and ordinance.

And I do adjudge said defendant, William Fennan, guilty on the charge as laid in the complaint, and I do adjudge that the said defendant, William Fennan, pay the fine of \$200.00, or in default thereof, be committed to the county jail for a period of one day.

In Witness Whereof, I, Edmund C. Gaskill, Jr., Recorder of the City of Atlantic City, New Jersey, to this record of conviction have set my hand and
30 seal at Atlantic City, aforesaid, this twenty-eighth day of July, A. D. 1915.

EDMUND C. GASKILL, JR., (Seal)
Recorder of the City of Atlantic City, N. J.

8766

[INFORMATION]

STATE OF NEW JERSEY,
ATLANTIC COUNTY, }
ATLANTIC CITY. } ss.

10

CHARLES N. APPLE, upon his oath informs that on or about the twenty-fifth day of July, A. D. 1915, said day being a Christian Sabbath, or the first day of the week, commonly called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, one William Fennan, an employee of the Atlantic Amusement Company did assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company, of a certain form of amusement, commonly called or known as JOHNSON FAMILY—throw three balls at head of man—in a place of public entertainment within the City of Atlantic City aforesaid, to wit: at that place of public entertainment, commonly called or known as Steeplechase Pier, all of which is contrary to provisions of Section One of an ordinance of the City of Atlantic City, entitled, “An Ordinance to amend an ordinance entitled, ‘An Ordinance for the Suppression of Vice and Immorality,’ approved August 13, 1901,” which said amendment was passed by the Board of Commissioners of Atlantic City, on May 13th, 1915, and approved May 14th, 1915, and therefore he prays that the said William Fennan may be apprehended, and held to answer

to said complaint and dealt with as law and justice may require.

CHARLES N. APPLE.

Sworn and subscribed to before me, this 27th day of July, 1915.

EDMUND C. GASKILL, JR.,
Recorder of Atlantic City, N. J.

10 Date, 7/28/15.

Plea, Not guilty—Guilty.

Disposition, Fine \$200.00, or one day in jail.

RETURN, CASE NO. 4.

(Filed Sept. 14, 1915)

NEW JERSEY SUPREME COURT.

WILLIAM FENNAN, <i>Prosecutor,</i>	} ON CERTIORARI. RETURN. CASE No. 4.
VS.	
ATLANTIC CITY AND ED- MUND C. GASKILL, JR., <i>Recorder,</i>	
<i>Defendants.</i>	

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STATE OF NEW JERSEY, COUNTY OF ATLANTIC, CITY OF ATLANTIC CITY.	} ss.
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I, EDMUND C. GASKILL, JR., Recorder of the City of Atlantic City, in the County of Atlantic, State of New Jersey, do hereby certify that the within record is a true copy of the docket of the City of Atlantic City vs. William Fennan, as taken from and compared with the original now on file in the Recorder's Court of Atlantic City, New Jersey. 30

In witness whereof I have hereunto set my hand and seal this 28th day of August, A. D. nineteen hundred and fifteen.

EDMUND C. GASKILL, JR.,
Recorder of the City of Atlantic City,
New Jersey.

RECORDER'S COURT
Of the City of Atlantic City, N. J.

Before EDMUND C. GASKILL, JR., Recorder.

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STATE OF NEW JERSEY, }
ATLANTIC COUNTY, } ss.
ATLANTIC CITY.

Atlantic City,

vs.

William Fennan,
Defendant.

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APPEARANCES:

Att'y for City, JAS. M. SHEEN, ESQ.

Att'y for Def't, HARRY COULOMB, ESQ.

30 Be It Remembered, that on the 27th day of July, A. D. 1915, at Atlantic City aforesaid, before me, Edmund C. Gaskill, Jr., Recorder of the City of Atlantic City aforesaid, came Charles N. Apple and complained and made oath that on or about the 25th day of July, A. D. 1915, at Atlantic City, said day being a Christian Sabbath or the first day of the

week commonly called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, one William Fennan, an employee of the Atlantic Amusement Company, did assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company of a certain amusement commonly called or known as a FERRIS WHEEL, in a place of public entertainment, within the City of Atlantic City aforesaid, to wit: in that place of public entertainment commonly called or known as Steeplechase Pier, all of which is contrary to the provisions of Section One of an ordinance entitled, "An Ordinance to amend an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13th, 1901," which said amendment was passed by the Board of Commissioners of Atlantic City, on May 13th, 1915, and approved May 14th, 1915. 10

I did, therefore, issue my warrant for the arrest of the said defendant to answer to the said charge, and delivered the same to Charles N. Apple, of the City of Atlantic City for execution. Afterwards, to wit: on the 28th day of July, A. D. 1915, at the hour of three o'clock P. M., the said warrant having been returned into court by the said officer, with the defendant, I read the complaint to the said defendant, said defendant then and there being present, and said defendant being called on to plead, pleaded not guilty. 20

Thereupon, the following persons were sworn and testified to the following effect: The testimony was taken by a stenographer who was sworn to faithfully take and transcribe the same and is hereto annexed and made a part hereof. 30

Thereupon, I, the said Edmund C. Gaskill, Jr., Recorder of the City of Atlantic City, upon the testi-

mony of creditable witnesses aforesaid, having duly considered the same and the weight to which each party's testimony was entitled, did find the defendant to be guilty of the offense charged, and did adjudge that said defendant, William Fennan, was in the employ of the Atlantic Amusement Company on the 25th day of July, 1915, said day being a Christian Sabbath, or the first day of the week, commonly called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, and did on that day assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company, of a certain amusement, commonly called or known as a FERRIS WHEEL, in a place of public entertainment within the City of Atlantic City, aforesaid, to wit: in that place of public entertainment commonly called or known as Steeplechase Pier, as set forth in the complaint and testified to by the witnesses in violation of said section and ordinance.

And I do adjudge said defendant, William Fennan, guilty on the charge as laid in the complaint, and I do adjudge that the said defendant, William Fennan, pay the fine of \$200.00, or in default thereof, be committed to the county jail for a period of one day.

In Witness Whereof, I, Edmund C. Gaskill, Jr., Recorder of the City of Atlantic City, New Jersey, to this record of conviction have set my hand and seal at Atlantic City, aforesaid, this twenty-eighth day of July, A. D. 1915.

EDMUND C. GASKILL, JR., (Seal)
Recorder of the City of Atlantic City, N. J.

8767

[INFORMATION]

STATE OF NEW JERSEY,
ATLANTIC COUNTY, }
ATLANTIC CITY. } ss.

10

CHARLES N. APPLE, upon his oath informs that on or about the twenty-fifth day of July, A. D. 1915, said day being a Christian Sabbath, or the first day of the week, commonly called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, one William Fennan, an employee of the Atlantic Amusement Company did assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company, of a certain amusement, commonly called or known as a FERRIS WHEEL, in a place of public entertainment within the City of Atlantic City aforesaid, to wit: at that place of public entertainment, commonly called or known as Steeplechase Pier, all of which is contrary to the provisions of Section One of an ordinance of the City of Atlantic City, entitled, "An Ordinance to amend an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13, 1901," which said amendment was passed by the Board of Commissioners of Atlantic City, on May 13th, 1915, and approved May 14th, 1915, and therefore he prays that the said William Fennan may be apprehended, and held to answer

to said complaint and dealt with as law and justice may require.

CHARLES N. APPLE.

Sworn and subscribed to before me, this 27th day of July, 1915.

EDMUND C. GASKILL, JR.,
Recorder of Atlantic City, N. J.

10 Date, 7/28/15.

Plea, Not guilty—Guilty.

Disposition, Fine \$200.00, or one day in jail in default.

RETURN, CASE NO. 5.

(Filed Sept. 14, 1915)

NEW JERSEY SUPREME COURT.

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WILLIAM FENNAN, Prosecutor,	}	ON CERTIORARI. RETURN. CASE No. 5.
vs.		
ATLANTIC CITY AND ED- MUND C. GASKILL, JR., Recorder,		
Defendants.		

20

STATE OF NEW JERSEY, COUNTY OF ATLANTIC, CITY OF ATLANTIC CITY.	}	ss.

I, EDMUND C. GASKILL, JR., Recorder of the City of Atlantic City, in the County of Atlantic, State of New Jersey, do hereby certify that the within record is a true copy of the docket of the City of Atlantic City vs. William Fennan, as taken from and compared with the original now on file in the Recorder's Court of Atlantic City, New Jersey. 30

In witness whereof I have hereunto set my hand and seal this 28th day of August, A. D. nineteen hundred and fifteen.

EDMUND C. GASKILL, JR.,
*Recorder of the City of Atlantic City,
New Jersey.*

RECORDER'S COURT
Of the City of Atlantic City, N. J.

Before EDMUND C. GASKILL, JR., Recorder.

10

STATE OF NEW JERSEY,
ATLANTIC COUNTY,
ATLANTIC CITY. } ss.

20

Atlantic City,
vs.
William Fennan,
Defendant.

APPEARANCES:

Att'y for City, JAS. M. SHEEN, ESQ.
Att'y for Def't, HARRY COULOMB, ESQ.

10 Be It Remembered, that on the 27th day of July, A. D. 1915, at Atlantic City aforesaid, before me, Edmund C. Gaskill, Jr., Recorder of the City of Atlantic City aforesaid, came Charles N. Apple and complained and made oath that on or about the 25th day of July, A. D. 1915, at Atlantic City, said day being a Christian Sabbath or the first day of the

week commonly called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, one William Fennan, an employee of the Atlantic Amusement Company, did assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company of a certain amusement commonly called or known as a RAZZLE-DAZZLE, in a place of public entertainment, within the City of Atlantic City aforesaid, to wit: in that place of public entertainment commonly called or known as Steeplechase Pier, all of which is contrary to the provisions of Section One of an ordinance entitled, "An Ordinance to amend an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13th, 1901," which said amendment was passed by the Board of Commissioners of Atlantic City, on May 13th, 1915, and approved May 14th, 1915. 10

I did, therefore, issue my warrant for the arrest of the said defendant to answer to the said charge, and delivered the same to Charles N. Apple, of the City of Atlantic City for execution. Afterwards, to wit: on the 28th day of July, A. D. 1915, at the hour of three o'clock P. M., the said warrant having been returned into court by the said officer, with the defendant, I read the complaint to the said defendant, said defendant then and there being present, and said defendant being called on to plead, pleaded not guilty. 20

Thereupon, the following persons were sworn and testified to the following effect: The testimony was taken by a stenographer who was sworn to faithfully take and transcribe the same and is hereto annexed and made a part hereof. 30

Thereupon, I, the said Edmund C. Gaskill, Jr., Recorder of the City of Atlantic City, upon the testi-

mony of creditable witnesses aforesaid, having duly considered the same and the weight to which each party's testimony was entitled, did find the defendant to be guilty of the offense charged, and did adjudge that said defendant, William Fennan, was in the employ of the Atlantic Amusement Company on the 25th day of July, 1915, said day being a Christian Sabbath, or the first day of the week, commonly called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, and did on that day assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company, of a certain amusement, commonly called or known as a RAZZLE-DAZZLE, in a place of public entertainment within the City of Atlantic City, aforesaid, to wit: in that place of public entertainment commonly called or known as Steeplechase Pier, as set forth in the complaint and testified to by the witnesses in violation of said section and ordinance.

And I do adjudge said defendant, William Fennan, guilty on the charge as laid in the complaint, and I do adjudge that the said defendant, William Fennan, pay the fine of \$200.00, or in default thereof, be committed to the county jail for a period of one day.

In Witness Whereof, I, Edmund C. Gaskill, Jr., Recorder of the City of Atlantic City, New Jersey, to this record of conviction have set my hand and seal at Atlantic City, aforesaid, this twenty-eighth day of July, A. D. 1915.

EDMUND C. GASKILL, JR., (Seal)
Recorder of the City of Atlantic City, N. J.

8768

[INFORMATION]

STATE OF NEW JERSEY,
ATLANTIC COUNTY, } ss.
ATLANTIC CITY.

10

CHARLES N. APPLE, upon his oath informs that on or about the twenty-fifth day of July, A. D. 1915, said day being a Christian Sabbath, or the first day of the week, commonly called Sunday, within the City of Atlantic City, County of Atlantic and State of New Jersey, one William Fennan, an employee of the Atlantic Amusement Company did assist as such employee, in the carrying on and conducting by the said Atlantic Amusement Company, of a certain amusement, commonly called or known as a RAZZLE-DAZZLE, in a place of public entertainment within the City of Atlantic City aforesaid, to wit: at that place of public entertainment, commonly called or known as Steeplechase Pier, all of which is contrary to provisions of Section One of an ordinance of the City of Atlantic City, entitled, "An Ordinance to amend an ordinance entitled, 'An Ordinance for the Suppression of Vice and Immorality,' approved August 13, 1901," which said amendment was passed by the Board of Commissioners of Atlantic City, on May 13th, 1915, and approved May 14th, 1915, and therefore he prays that the said William Fennan may be apprehended, and held to answer to

said complaint and dealt with as law and justice may require.

CHARLES N. APPLE.

Sworn and subscribed to before me, this 26th day of July, 1915.

EDMUND C. GASKILL, JR.,
Recorder of Atlantic City, N. J.

10 Date, 7/28/15.

Plea, Not guilty—Guilty.

Disposition, Fine \$200.00, or one day in jail in default.

ORDER TO TAKE TESTIMONY.

NEW JERSEY SUPREME COURT.

WILLIAM H. FENNAN,
Prosecutor,

VS.

CITY OF ATLANTIC CITY AND
EDMUND C. GASKILL, JR.,
Recorder,

Defendants.

ON CERTIORARI.
ORDER TO TAKE TES-
TIMONY.
CASES NOS. 1, 2, 3, 4
AND 5.

10

It Is on this eleventh day of September, A. D. 20
nineteen hundred and fifteen, Ordered that either
side have leave to take depositions and testimony to
be used on the argument of the writs of certiorari,
Nos. 1, 2, 3, 4 and 5 in the above cases, upon giving
two days' notice to the other side of the intention to
take such testimony.

CHAS. C. BLACK,
J. S. C.

30

STIPULATION.

(Filed Sept. 24, 1915)

NEW JERSEY SUPREME COURT.

10

WILLIAM H. FENNAN,

Prosecutor,

VS.

CITY OF ATLANTIC CITY,
*et. al.,**Defendants.*

ON CERTIORARI.

STIPULATION.

5 CASES.

20

It Is Hereby Stipulated by and between counsel for the prosecutor and counsel for the defendants, that the one return of the ordinance and testimony in the five cases will be accepted as a return of all the writs, and that the one set of reasons filed in the five cases will be accepted as reasons in all of the writs.

30

BOURGEOIS & COULOMB,

Attorneys for Prosecutor.

THEODORE W. SCHIMPF,

Attorney for Defendants.

STIPULATION.

NEW JERSEY SUPREME COURT.

WILLIAM H. FENNAN, <i>Prosecutor,</i>	} ON CERTIORARI. STIPULATION. 5 CASES.	10
VS.		
CITY OF ATLANTIC CITY AND EDMUND C. GASKILL, JR., Recorder,		
<i>Defendants.</i>		

It is stipulated by and between respective counsel 20
 that the testimony taken before the Recorder in the
 above matter and made a part of the return be used
 on the argument of the above cause.

BOURGEOIS & COULOMB,
Attorneys of Prosecutor.
 THEO. W. SCHIMPF,
Attorney of Defendants.

TESTIMONY.

RECORDER'S COURT OF ATLANTIC CITY.

10

CITY OF ATLANTIC CITY,

VS.

WILLIAM FENNAN.

} VIOLATION OF VICE
AND IMMORALITY
ORDINANCE,
SUNDAY AMUSEMENT.

20

Atlantic City, N. J., July twenty-eighth, 1915.

TESTIMONY.Before HON. EDMUND C. GASKILL, Recorder.

30

APPEARANCES:

For City of Atlantic City: JAMES M. SHEEN, Esq.

For Defendant: BOURGEOIS and COULOMB, Esqs.

Mr. Coulomb: We plead not guilty to the seventeen complaints.

Before we proceed to the trial of the case or hearing, I want to make a motion to dismiss the complaints on the ground that the ordinance, under which these complaints were brought, which I am given to understand was just passed, No. 16, introduced by Director Bartlett April fifteenth, 1915, and entitled "An Ordinance to amend an ordinance entitled 'An Ordinance for the suppression of Vice and Immorality,' approved April thirteenth, 1901." 10
My first objection to the ordinance, that under the City Charter of Atlantic City, under the Act of 1902, the City Commission has no right to pass any ordinance in violation of the Sunday law, because the Vice and Immorality Statute passed by the Legislature of the State of New Jersey is complete and controls entirely any violation of the Sunday law.

Secondly, that the Act itself is abusive and unconstitutional in that it is class legislation, it having 20
exempted from the provisions of the Act music concerts and moving picture shows.

Third, that the ordinance is unconstitutional and invalid, because its penalty therein prescribed is illegal, the first reason being that it conflicts with the penalty provided by the Vice and Immorality Act passed by the Legislature, and second, it gives to the Recorder certain discretions which under the law the Recorder cannot possess.

I further wish to object to the number of complaints here, there being sixteen, upon the ground 30
that these amusements, as it will appear from the evidence, are conducted on one pier known as the Steeplechase, and in turn is essentially one violation of whatever Sunday law there may be. The mere fact that this Sunday law is violated by a number

of devices on one pier, and on which one license is required by the city, cannot possibly result in the conviction for each separate device. The situation being that the real charge, the essence of the charge that William Fennan has broken the Sabbath, or is guilty of violating the sanctity of the Sabbath. That is one offence, no matter how many occasions that may be done.

10 Furthermore, and perhaps it is embraced in the reasons I have already suggested, and that is that the city has no authority to pass any ordinance which changes or interferes with or alters the provisions of the State Legislature with respect to the violation of any law of the Legislature of any legislation or any ordinance; the penalty must be in accordance with the statute in such cases.

The Court: I overrule all your motion.

20 Mr. Coulomb: Allow me an exception.

(Exception noted for defendant.)

Mr. Coulomb: I might suggest that these complaints be heard together. There is no use of swearing the witnesses individually. I understand that two officers, Mr. Apple and Mr. Scott, went on this pier on Sunday and made these observations. Perhaps, without taking any evidence we might be able
30 to concede enough facts in this case.

The Court: Why don't he just plead guilty?

Mr. Coulomb: We can't plead guilty, because we say there has been no crime committed, because there is no valid ordinance, that is the only reason.

We could admit the facts if those facts can be properly conceded in this case. If Mr. Sheen is willing I will just tell you what they are. We will admit, I think, every device here used operated on last Sunday and that a general admission fee is charged on Sunday.

The Court: Twenty-five cents?

Mr. Coulomb: That there is no big ticket given 10
out like on the other days of the week. I think
separate admissions are charged to three of the de-
vices after you get on the pier, and also that the
pier just pays one license fee for operating the en-
tire establishment, and does not pay a separate
license fee to each separate device on the pier.

The Court: My understanding is that they pay a
separate license fee for each one of those.

Mr. Coulomb: I am told not. I can find out. 20

The Court: Suppose you find out.

(Mr. Coulomb consults Mr. Fennan.)

Mr. Coulomb: He says that there is only one
license fee paid and that is the pier license.

The Court: What do you determine the fees paid 30
by the Steeplechase Pier Company?

Mr. Mulford Rose: That is, that are operated by
the pier company? It is to pay for the pier and its
slot machines. Mrs. Parons pays for the ice cream;
Mr. Cole pays for the cigar stand; and Mr. Cramer

pays for the photograph gallery; and Mr. Miller for post card. I can't just call their names. There are several persons doing business individually from the pier.

Mr. Sheen: We will move the shooting gallery one, and then the testimony may be consolidated.

Will you stipulate and agree that the Steeplechase Pier Company's place of amusement is a place of
10 public entertainment operated by the Atlantic Amusement Company, and that William Fennan is an employee?

Mr. Coulomb: We will admit that.

CHARLES N. APPLE, SWORN.

20 Direct examination.

By Mr. Sheen:

Q. Mr. Apple, you are a detective in the employ of the City of Atlantic City?

A. Yes, sir.

Q. Do you know where the Steeplechase Pier is?

A. On the Boardwalk, between Pennsylvania and North Carolina Avenue.

30 Q. Did you visit the Steeplechase Pier on Sunday, the twenty-fifth of July, 1915?

A. Yes, sir.

Q. Did you go on the pier?

A. Yes, sir.

Q. How did you gain admission?

A. Paying twenty-five cents to the man in the

box office. He give me a ticket and I give it to the gate tender.

Q. What did you do after you went on the pier?

A. I waited for about two minutes, I guess, when Sergeant Scott came on, then we went out the pier and looked the different amusements. First, we went to the Johnson family; bought three balls to knock down a nigger.

Q. Is the Johnson family a knock-down-the-baby game? 10

A. Sort of that thing, heads come up in the center, a man's head, he sticks his head through the hole.

Q. What time of the day was this?

A. We went on the pier at 8:45 in the evening. We were at the Johnson family at 8:50.

Q. Did you pay?

A. Five cents for three balls—and threw them.

Q. Then what did you do?

A. We then went to the Ferris wheel and paid five cents and took a ride in the Ferris wheel, that was at 8:55. 20

The Recorder: Did you get any prize?

A. No.

The Recorder: Just the pleasure of hitting something?

A. I believe there is something if you do something, but we didn't hit a head. 30

Q. Not good shots? How did you—did you obtain any tickets?

A. Not at the Ferris wheel.

Q. Or knock-down-the-baby?

A. No, sir, you pay the cash and they ring it up on the cash register.

Q. And how did they take fare on the Ferris wheel?

A. As you went in the wheel you give him a nickel and he stuck it in his pocket.

Q. Then what did you do after you took a ride on the Ferris wheel?

A. I believe, went in the merry-go-round. I purchased three tickets at the little box, then to go and sit on the merry-go-round, paid fifteen cents for the
10 three of them, and two end tickets I gave to the fellow on the merry-go-round, and the center ticket I kept.

Q. Is this the ticket you say you kept?

A. 815947, yes, sir, forty-six and forty-seven I give to the fellow on the wheel.

(Ticket marked C1.)

Q. Merry-go-round the same as a carousal?

20 A. No music on Sunday night.

Q. No music?

A. No.

Q. You said you paid the extra fare for that?

A. Yes. We went over to the shooting gallery——

Q. What did you do there?

A. ——and paid twenty-five cents there and shot one rifle load of shot.

Mr. Coulomb: How much?

30

A. Twenty-five cents at the shooting gallery.

The Recorder: How many shots did you get for a quarter?

A. Sixteen.

Q. What did you do after shooting?

A. We went looking over the different amusements that was running, which were included in the general admission fee of twenty-five cents.

Q. What was there operating that ——

A. Razzle-dazzle, barrel of love.

Q. What is the razzle-dazzle?

A. Thing that you go up and circles around.

Q. Did you go on it?

A. No, we didn't go on.

Q. Did you see other people on it?

10

A. We seen other people on it. They started to get on when we went out to the other things on the pier.

Q. And it was in operation?

A. Yes, sir.

Q. The next one.

A. The razzle-dazzle, the barrel of love.

Q. What is that?

A. Big barrel they strap you in, rolls down the incline and up the incline. You just simply turn 20 over and over, you are strapped in it.

Q. Any ——

A. We didn't try any of the three amusements.

Q. Did you see anybody getting in that?

A. I think there was a couple going up the steps when we were coming up; the attendants was there waiting to attend to anybody came.

Q. Then what did you see?

A. Then there is a big swing out there that was going, that had a good crowd in.

30

Q. Describe that.

A. That is a great big swing up on a frame work, will hold, I suppose—I suppose it will hold eighteen or twenty people and maybe more.

Q. That the one they have electric lights on?

A. Yes.

Q. You say that was in operation?

A. Yes, sir.

Q. Then next?

A. The house of troubles. Lattice work. You go in and cuts around and cut around through sort, I don't know what you call it, crazy object thing, people was going in there and out.

Q. What else did you see?

10 A. We came inside in Babyland, a little place called Babyland, where the children play, swings, see-saws and little sand pits that some children play in there. At the pier-end there was some swings, just the ordinary swing that one person can get in. They were running, that is, people were swinging on them. Babyland was running, the mixer, that was running.

Q. What is the mixer?

20 A. You go across the platform and get out in a bowl like and when it throws you it throws you down in the bowl and whatever position you land, you stay there until you stop.

Q. You say that was running?

A. Yes.

Q. And what else?

A. A large soup bowl that was going, saw people coming down into that.

Q. And describe that.

10 A. Well, you go up a stairway, you come down the incline sort of a cut away to a big bowl, and go around the bottom and then you take a rope and pull yourself out.

Q. And that was in operation?

A. Yes.

Q. What else?

A. The moving stairway.

Q. What is that?

A. That is a double set of stairs, that is, zig-zag, backward and forward, walk up one side and down the other.

Q. You say that was in operation?

A. Yes.

Q. See anything else?

A. The tango thing was running.

Q. What was that?

A. That is a thing that simply jots up and down, backward and forward in the front of the pier. 10

Q. What else was running?

A. The barrel of fun, I think it is called, a large barrel at the front that was running.

Q. Did you see anything else in operation?

A. The human roulette was running. The big slide was running.

Q. What is that?

A. The big slide, large slide, you know, in the center of the building; and then over on this lower side of the pier there is a small baby slide, not so very high, and then there is a double slide called the cannon, you come down through a barrel thing like, long tube and go down in the basement and then up stairs and out front to a cage. 20

Q. It was in operation?

A. Yes.

Q. Anything else? This instrument you call the tango, is that what they call the turkey trot or is that a different one?

A. That is the turkey trot instead of the tango. 30 Turkey trot, the tango thing wasn't running. I think that is about all. Tango thing wasn't running. The aeroplanes was running, and down and out didn't look as though they were running, everything else was.

Q. What time did you leave the pier?

A. About 9:27, I guess it was.

Q. Did you notice very many people, if there were very many people on the pier?

A. There wasn't very many on Sunday night, very slim crowd.

Cross-examination.

By Mr. Coulomb:

10

Q. Any music?

A. No music that I heard of.

Q. The big slide is not operated—it is a stationary bowl that people can use ——

A. Yes.

Q. There is no movement to it at all?

A. No.

Q. Same way with the baby slide?

A. Yes.

20

Q. And the double slide, cannon, as you call it?

A. Yes.

Q. What else? In this babyland what do they have there that moves?

A. They have got little see-saws that move.

Q. By the children, themselves?

A. Oh, yes, nothing in there that moves mechanically.

Q. This big swing, does that move mechanically or is that moved by ——

30

A. That is moved by the attendants pulling it, the people get in there and the attendants of the pier pull it. Picture gallery on there, that was going, too.

Q. The photograph gallery?

A. Fellow taking pictures, the photograph gallery.

Mr. Coulomb: I would like to have that stricken out.

The Court: Strike it out.

Q. These things first you speak of, the Johnson family, the Ferris wheel and merry-go-round and the shooting gallery are out beyond, on the end of the pier, Mr. Apple?

A. Yes, outside of the building.

Q. And you can't get to any of these devices unless you pay the initial admission fee of twenty-five cents?

10

A. Yes, sir.

Q. Have you been on the pier during the week at any time, ever?

A. Yes.

Q. You have seen the large cards to be punched for each device. They didn't give you those on Sunday?

A. I didn't see none on Sunday.

Q. Did you notice whether there were many people on the pier Sunday?

20

A. I wasn't down there during the day, I couldn't answer that.

Q. There was no disorder on the pier?

A. No.

Q. Seemed to be enjoying themselves?

A. Yes, enjoying themselves. They had those clown suits on having a good time.

Q. Were there many attendants around?

A. Well, there was one or two at each —

Q. Device?

30

A. Device. There generally are.

Q. Were all these devices in actual operation and being used by people?

A. Yes.

Q. You saw that, did you?

A. Yes.

Q. Did you tell me how far the shooting gallery is out on the pier?

A. The extreme end.

Q. Where is the Johnson family?

A. Just before you leave the building.

Q. You mean beyond the building, ocean side of the building?

A. Ocean side of the building, yes.

Q. And where is the merry-go-round?

10 A. Merry-go-round is on the end, near the pier-end of it, outside of the building.

Q. And the Ferris wheel?

A. That is out there. All those large things are out in the open air.

Q. They were all lit up by night?

A. Yes.

Q. With colored lights?

A. Yes.

Q. Who directed you, Mr. Apple, to make this in-
20 vestigation?

A. Chief of Police.

Q. Did you make any other investigation of offences of the Sunday law on that day except the Steeplechase Pier?

A. I was detailed there on Sunday night.

By Mr. Sheen:

Q. Mr. Apple, you said in answer to Mr. Cou-
30 lomb's question you had been there in week days. Did you notice the employees on Sunday night?

A. Yes, sir.

Q. Were they dressed the same as they were on week days?

A. Yes, sir. There was no cards.

Q. How are they dressed?

A. With a cap and red coat.

Q. Were there any material differences between the operations of these several amusements on Sunday night that you saw them, than when you saw them on week days?

A. None at all.

Mr. Coulomb: I object to that.

The Court: I think the question is perfectly proper, Mr. Coulomb. 10

A. Not at all.

Q. Was there any noise that you could perceptibly—that you could hear or anyone else could hear from the walk, as you approach the pier?

A. Outside the folks having a good time hollering at each other.

Q. This barrel of fun in the front and turkey trot and several other of those mechanical, they making a noise, do you think, any? 20

Mr. Coulomb: Objected to. It is leading and not re-direct examination.

The Court: Didn't you bring out something about there being any noise?

Mr. Coulomb: No, I asked him if there was any. He has been asked whether there was any noise and he has answered the question. 30

The Court: Don't you think the Court would have a right to go back on the re-direct examination?

Mr. Coulomb: I don't suppose I can stop the Court from doing it. I don't legally think it can be done.

Mr. Sheen: I won't press it.

By the Court:

Q. Let me understand. The Johnson family, that was where you would purchase three balls and throw at heads?

10 A. Yes. I think five of these wooden heads. Some come out of, rather through this then the window and some out of barrels, and go down again, and in the center of the whole group a space is broke, to open and close a wide opening; a man, nigger, would stick his head through the whole and draw your attention to hit him.

Q. In case you would hit him what would happen?

A. You might get a cigar or something, I don't know.

Q. Did you? Those of you who were able and were game did you get a cigar?

20 A. No.

Q. Did you throw any balls?

A. Threw three balls for a nickel.

Q. Did they have cigars there?

A. I have seen cigars handed out there.

Q. At this particular place?

A. At this particular place I have seen cigars handed out there.

By Mr. Coulomb:

30

Q. Did you see any on this particular night?

A. Didn't take notice. We was the only ones amusing ourselves.

By the Court:

Q. Were the same attendants there Sunday night you would see on other occasions?

A. Yes, sir.

Q. Was there any announcement as to what would be done in case you hit any member of the Johnson family?

A. No, sir.

Q. Now, did your admission to the pier permit you to use three balls —

A. No, sir, we paid five cents extra for that.

Q. I understood that you paid five cents extra for the trip on the Ferris wheel? 10

A. Yes, sir.

Q. And also on the merry-go-round?

A. Yes, sir.

Q. And you testified that the merry-go-round was a carousal?

A. Yes, sir.

Q. You also paid extra for the shooting gallery?

A. Yes, sir.

Q. Did you ride on the razzle-dazzle?

A. No, we didn't. 20

Q. Did you see anybody else riding on it?

A. Yes, sir.

Q. Now, did you have to pay extra to ride the razzle-dazzle, go in the house of trouble or barrel of love, or on the swing or babyland, or in the mixer or soup bowl or the moving stairs, the barrel of fun or the big slide, the small slide or the human roulette, or the turkey trot?

A. No, sir.

Q. You wouldn't have to pay extra on them? 30

A. No, sir, the nickel included all that.

Q. The only difference between Sunday night and the other night when you were there, on week day night, was that Sunday night you didn't get a round disk?

A. No, and no music.

Q. But the actual amount of cash was the same as on other nights?

A. Yes, sir.

By the Court:

Q. You walk along the Boardwalk on Sunday last?

A. Not until Sunday night, no, sir.

Q. Well, how far on the Boardwalk did you go?

10 A. Sunday night?

Q. Yes.

A. Went down Virginia Avenue to the walk and went in the pier and come away and came back to the office again.

Q. You didn't take a walk along the beach there at all?

A. No, sir, not at all.

By Mr. Coulomb:

20

Q. Do you know whether the Steel Pier was open on Sunday night?

A. I seen people was going in there.

Q. Did you notice the Garden Theater was open?

A. I don't know.

Q. The Virginia Theater?

A. No.

Q. You passed the Garden Theater?

A. Yes.

30 Q. And you didn't notice?

A. Didn't notice.

By the Court:

Q. From any position on the Boardwalk could you see these amusements on the Steeplechase?

A. Get out to the rail you could, yes, sir, on the pier. Get out to the rail you could see better, on account of the crowd.

Q. If a person would pass up and down the Boardwalk could they see the amusements in operation?

A. Yes, sir.

Q. That is the amusements that you testified to?

A. Yes, sir.

By Mr. Coulomb:

10

Q. Did you see the shooting gallery being operated?

A. Hardly off the Boardwalk.

Q. Did you see the Johnson family being thrown at?

A. If you stood around the rail by the side of the pier you could, yes.

Q. Did you see whether you could or could not observe —

20

A. No.

By the Court:

Q. You could see the merry-go-round turning around?

A. Yes.

Q. The Ferris wheel?

A. Yes.

30

By Mr. Coulomb:

Q. Is that a distasteful sight to see that ring of light to move around?

A. That is not for me to say.

Q. I am asking.

A. I couldn't answer that question.

Q. You wouldn't say it was distasteful before to you?

A. I wouldn't say it was distasteful to me. I am not the whole thing.

Q. Don't you think that combination of lights out there on the Steeplechase Pier is rather attractive?

Mr. Sheen: Objected to. That is immaterial to
10 the case.

SAMUEL W. SCOTT, sworn.

Direct examination.

By Mr. Sheen:

20 Q. You are a detective in the employ of the City of Atlantic City, Mr. Scott?

A. No, sir, I am sergeant of police.

Q. Sergeant of police. Did you visit the Steeplechase Pier on Sunday evening, July the twenty-fifth, 1915?

A. I did.

Q. Where is the Steeplechase Pier?

A. It is on the Boardwalk, just below Pennsylvania Avenue.

30 Q. In Atlantic City?

A. Yes.

Q. How did you gain admission?

A. Paid twenty-five cents at the ticket box, got a ticket and handed it to the man at the door.

Q. Did you look around the inside of the pier as you went on?

A. I did.

Q. Did you notice any machinery in operation?

A. Yes, sir.

Q. Could you hear the machinery being operated?

A. Well, yes, you could hear the stairway; you could hear the barrel if you went right up to it.

Q. Do you know whether you could hear it from the Boardwalk?

A. Well, I have heard it from the Boardwalk.

Q. This particular night?

10

A. I didn't notice it particular Sunday night from the walk. I didn't pay any attention to that.

Q. Were there people on the pier when you went on?

A. Yes, sir.

Q. How were they behaving; were they laughing?

A. Oh, yes, they were having a good time.

Q. Did you hear other laughter?

A. Yes.

Q. Was that perceptible or would you have to get 20 up close to them?

A. Oh, no, you could hear them at a distance.

Q. How about children, were there many children there?

A. No, I didn't see many children there. Was probably three or four or maybe a half dozen in what they call babyland.

Q. Where was that?

A. That is the back part of the pier.

Q. Just describe it.

30

A. That is in the building. They have see-saws there, and small roulette, I suppose they call it, with small chairs on it, small slides, rocking horse and so forth.

Q. Children using that on that evening, Sunday evening?

A. Why, I didn't pay particular attention what they were using in there when we went on. A hobby horse. I think there were a couple on the roulette wheel, that you turn around.

Q. They were using the amusement called baby-land?

A. Yes.

Q. How were they behaving, were they laughing?

A. No, they didn't seem to be making any noise.

10 Q. After you went on the pier, what did you do?

A. We went to the Johnson family, what they call the Johnson family first.

Q. What is that ?

A. Why, there is a lot of figures there. One figure, a woman sits up washing. Another colored man comes up out of the barrel, and there is a colored man had his head through a hole and hollering, attracting people's attention to throw at him.

20 Q. Was he making a loud noise?

A. Oh, yes, he was hollering.

Q. What was he saying?

A. "Come on, try again, you didn't hit me." I couldn't exactly say what he said or all he said.

Q. As you approached—by the way, this is knock-down-the-baby game, is it not?

A. No.

Q. It is not?

A. It is not the same as knock-the-baby-down.

30 The babies are all in a row.

Q. Same character?

A. Yes, practically.

Q. As you approached it, did this colored fellow make any outcry to attract your attention?

A. He was hollering there to attract everybody's attention, not particularly ourselves.

Q. How far could you hear him?

A. Oh, you could hear him probably about twice the length of this room, perhaps; maybe further, if you listened to him.

Q. A hundred feet or so?

A. Yes, I think you could hear him a hundred feet.

Q. You say you bought three balls?

A. Yes.

Q. How much did you pay for them?

A. Five cents.

Q. What did you do with them?

10

A. Threw them at the colored fellow.

Q. Did you hit him?

A. No.

Q. Then what did you do?

A. We then went to the Ferris wheel.

Q. What is that?

A. That is a large wheel that goes around and takes you up in the air and just revolves around. Seats in it.

Q. Did you take a ride on that?

20

A. I did.

Q. Did you give admission for that?

A. Five cents.

Q. Did you see other people using it?

A. Yes.

Q. How many could you judge?

A. I think there were four on to it when we went on, the same trip we went.

Q. Is there any noise connected with it or any sound connected with it?

30

A. No, you could hear the machinery running while you were on the machine, but you wouldn't hear it any distance away, you couldn't hear it far away.

Q. Then after you took a ride on that, what did you do?

A. We then went to the carousel.

Q. How did you get on that?

A. Mr. Apple bought three tickets.

Q. And what did you do with the tickets?

A. He gave two of them to the attendants who collected on the merry-go-round, and kept one himself.

Q. How much did you pay for the tickets?

A. He paid fifteen cents for them.

10 Q. Were there other people using the merry-go-round or carousel?

A. Oh, yes.

Q. Did that make any noise of any manner in its operation or otherwise?

A. Oh, not much. I wouldn't say it made much noise.

Q. After that what did you do?

A. We went to the shooting gallery.

Q. And what did you do there?

20 A. We shot, shot at the ducks and various other things there with the rifle, we paid a quarter for it.

Q. Did your rifle make any sound when you shot it?

A. Oh, yes.

Q. Could you hear the sound of the rifle very far, do you think?

A. No.

Q. Did you hit anything?

A. Why, I believe we did hit a duck.

30 Q. How about—did it make a sound when you knocked him down?

A. Yes, you would hear it when you hit him.

Q. Did Mr. Apple shoot any?

A. Yes, he shot, too.

Q. How did he do?

A. I think he beat me. He hit more than I did.

Q. And with each one he hit he made a noise, did he not?

A. Yes.

Q. What did you do after that?

A. We went around to look at the other amusements, other devices to see what was running.

Q. What did you find running?

A. The house of trouble.

Q. What is that?

A. That is lattice-work where you go in and get 10
lost; and razzle-dazzle.

Q. Were there any people in the house of trouble?

A. Oh, yes, people going in the house of trouble.

Q. The razzle-dazzle. And what is the character of that?

A. Why, it is sort of a machinery that goes around and they turn it, and when you turn it it goes up and down and continues to go around.

Q. Make a noise?

A. No, there is not much noise attached to that. 20

Q. And you saw people using it?

A. Yes.

Q. What else did you see?

A. Barrel of love.

Q. And what is that?

A. That is a big barrel, strap you in, then you go
down, then clean up again, then back.

Q. Did you see that in operation?

A. No, I didn't see anybody in that.

Q. What else did you see?

30

A. The swing.

Q. Big swing?

A. Yes, the large swing.

Q. And what is that?

A. There were a whole number of people, I don't
know just how many people. Sort of oval and it is
pulled by hand by employees of the pier.

Q. Was there an attendant in uniform in charge of the barrel of love?

A. Yes, there were two there in charge of the barrel of love.

Q. From their actions did they indicate to you that they were ready to operate to anyone came in?

A. Yes, they sit there the same as they would through the week.

Q. Was anyone using the big swing?

10 A. Yes.

Q. What else did you see?

A. The moving stairway.

Q. What is that like?

A. Oh, that is a set of stairs that moves up and down and you go up one side and down the other.

Q. Do they make a noise in operation?

A. They didn't make so much noise.

Q. Anyone using that when you saw it?

A. Yes.

20 Q. What else did you see?

A. Soup bowl.

Q. What is that?

A. They go up the stairway and then come down the slide and go down into this bowl and have a rope there to pull yourself up with.

Q. Anyone using that when you saw that?

A. Yes, they were using that.

Q. Anything else?

A. The turkey trot.

30 Q. What is that?

A. That is sort of of a platform that works to and fro and you get on and walk across.

Q. Was that in operation?

A. Yes.

Q. That is a mechanical device?

A. Yes.

Q. Does that make a noise?

A. Well, yes, a little, but not so much.

Q. See anything else?

A. The barrel of fun.

Q. What is that?

A. That is a large barrel, supposed to be a barrel that revolves and you are supposed to walk through it.

Q. That is a mechanical ——

A. Yes.

10

Q. You say that was in operation?

A. Yes.

Q. Did that make any noise?

A. Yes, that makes a little noise.

Q. What else did you see?

A. Saw what they call the big slide.

Q. And what is that?

A. You go up a set of steps and get on the slide and slide down.

Q. See anyone using it?

20

A. Yes.

Q. There were a little slide, small slide, a baby slide.

Q. See anything else?

A. Then there is a long one like a cannon, go up and come down the slide and out a hole.

Q. Were people using the small slide and the cannon slide?

A. They were using these.

Q. See anything else?

30

A. The roulette wheel.

Q. What is that like?

A. Why, it is a round thing that goes around. You get on to it, then it goes around and it goes so fast it throws you off.

Q. Mechanical amusement?

A. Yes.

Q. See anybody using it?

A. Yes.

Q. It was in operation?

A. Yes.

Q. See anything else?

A. Why, there is another thing that I don't know what they call that, the mixer, I think.

Q. What is that?

10 A. An elevated platform, and they get on that; when it starts up it throws you off and which ever way you land you are supposed to stay in that position until they slow down and stop.

Q. And that is another mechanical device?

A. Yes.

Q. See people using that?

A. Yes.

Q. Did the mixer or the human roulette wheel make any noise in the operation of it?

20 A. Oh, yes, made a little noise, yes.

Q. How about the small swing?

A. The small swing?

Q. What was that?

A. They were just—I didn't notice whether they were ropes or what. Just the same that a child would put up on a tree or something.

Q. Did you see anybody use them?

A. I believe there was a woman sitting on one of them.

30 Q. What time did you go on the pier, approximately?

A. About 8:47, a few minutes after Mr. Apple went on.

Q. And how long did you stay, approximately?

A. Why, I think we came out somewhere in the neighborhood of 9:30.

Q. Have you been on there in week days?

A. Yes, sir.

Q. Did you notice how the employees were dressed in the week days?

A. Yes.

Q. How were they dressed?

A. With red coat and cap, long peaked cap.

Q. Did you notice how they were dressed Sunday evening?

A. Yes.

10

Q. How were they dressed?

A. The same way.

Q. Did you notice any perceptible difference between the operation of the several amusements on Sunday evening and the time you went on there the week day?

A. No, with the exception of the carousel, there were no music.

Q. Was there music on the pier at all?

A. No.

20

Cross-examination.

By Mr. Coulomb:

Q. I understood you to answer to a question of Mr. Sheen that you could hear laughing?

A. Yes.

Q. Did you hear any laughing on the Boardwalk, people that were not on the pier?

30

A. Well, I didn't notice any particular people laughing on the Boardwalk. I wouldn't notice that.

Q. Any stores open?

A. Well, I didn't notice that.

Q. See whether there were any moving picture performances open?

A. I just came from Virginia Avenue to the walk.

Q. Notice whether the Steel Pier was open?

A. No, I did not.

Q. I understood you to say there was no music on the Steeplechase Pier at all?

A. No.

Q. How far will you say the shooting gallery was from the Boardwalk?

A. It is the extreme end of the pier.

10 Q. How far is that?

A. I couldn't say. I wouldn't want to place any distance, because I really couldn't tell.

Q. More than a hundred feet, isn't it?

A. Oh, yes, more than that.

Q. How far is the Johnson family from the Boardwalk?

A. Well, I should say half way out on the pier, that is the end of the building.

Q. In the building?

20 A. Extreme end of the building, back.

Q. Not out in the open air then?

A. No.

Q. Is the shooting gallery out in the open air?

A. Yes, sir.

Q. On the end of the pier?

A. Yes, sir.

Q. Did you hear this colored man in the Johnson family holloaing from the Boardwalk or from the front of the pier?

30 A. No.

Q. Could you hear the shots from the rifle gallery from the front of the pier?

A. No.

Q. You had to pay twenty-five cents to get on the pier before you could operate the Johnson family, the Ferris wheel or the shooting gallery?

A. Yes.

Q. You spoke of the roulette wheel. You mean the large platform on which the children, passengers sit?

A. No.

Q. Isn't that the roulette wheel?

A. No.

Q. What is the roulette wheel?

A. It is right in the front of the building, the human roulette, a large wheel, you sit on to it and then when they start it goes so fast it throws you off. A majority of the people cannot stay on it. 10

Q. You didn't mean a gambling roulette wheel?

A. No.

Q. Was this babyland inside of the building, too?

A. Yes.

Q. The house of trouble isn't a mechanical device, it is an open structure that you walk in and out?

A. That is all.

Q. The same way with the slides? 20

A. Yes, sir.

Q. Whatever mechanical operation, then, it is, goes by the passengers, themselves, using it?

A. Yes, sir.

Q. Were the people on the pier orderly and enjoying themselves?

A. Oh, yes.

30

WILLIAM HODGES, SWORN.

By Mr. Sheen:

Q. You live in Atlantic City, Mr. Hodges?

A. Yes, sir.

Q. And what is your business?

A. Why, I am a plain clothes man, Police Department.

Q. Did you visit the Steeplechase Pier on Sunday, the twenty-fifth of July, 1915?

A. Yes, sir.

Q. At what time of the day was it?

A. 2:15 in the afternoon; 3:15.

Q. How did you go on?

10 A. I paid my admission, bought a ticket.

Q. How much did you pay?

A. Twenty-five cents.

Q. After you went on, what did you see in the way of anything around—were there any people there?

A. Quite a number.

Q. Many children?

A. I didn't pay much attention to the children.

Q. Could you hear any sounds of laughter or gaiety of the people there?

20 A. Oh, yes, they were having a good time in general.

Q. Was it a perceptible noise that they were making?

A. No more than any other day.

Q. How much do they make the other days?

A. Steeplechase Pier isn't quiet any time.

Q. As you were going on did you notice the noise, going to enter from the Boardwalk?

30 A. You could hear the laughing, and people calling to each other.

Q. What did you do after you went on that —

A. I just noticed the different amusements, the turkey trot, the barrel of fun, the mixer, soup bowl, slides, the human roulette, the Johnson family, carousel, barrel of love, rifle range, razzle-dazzle, house of trouble.

Q. They all in operation?

A. They were all in operation.

By the Court:

Q. How about the Ferris wheel?

A. Ferris wheel was in operation.

By Mr. Sheen:

Q. The shooting gallery; is that a shooting gallery
where you take a gun and shoot the targets? 10

A. Yes.

Q. Did you use it?

A. No.

Q. Was anybody using it?

A. No, sir.

Q. See what they paid?

A. They paid, but I don't know what.

Q. Could you hear the report of the rifle? 20

A. You could hear rifle shot, explosion from the
pistol.

Q. Any perceptible noise from the vicinity of it?

A. No more than any other rifle range.

Q. You mentioned the carousel. What is that?

A. Merry-go-round and apparently five cents a
ride. I saw the price charged, but I didn't —

Q. Didn't use that?

A. No.

Q. Was it in operation at the time you saw it? 30

A. In operation.

Q. People using it?

A. Yes.

Q. That is a mechanical amusement, is it not?

A. Yes.

Q. Now, the Johnson family, what is the charac-
ter of that?

A. Well, that is four or five or six niggers, I don't know how many, that bob up and down and come from the side, and then they had a colored fellow that is about the interesting attraction on the pier in my mind.

Q. What was he doing?

A. He had an awful way of shouting.

Q. Tell us what he said?

A. I couldn't quote what he said. It sounded
10 just like a noise.

Q. How far could you hear it from the place where he was?

A. I don't know as I heard it at all after I left there. I wasn't interested in it. I just know it was operating.

Q. Is that something similar to the character of amusement known as knock-down-the-babies?

A. Well, it is on the same principle, I should
20 judge. Three balls for five cents.

Q. The Ferris wheel—by the way did you see anybody using that amusement?

A. Which amusement?

Q. The Johnson family.

A. Oh, yes, I saw quite a lot there.

Q. Ferris wheel?

A. That is a large wheel with sort of a car for passengers to sit in, revolves; this car takes you up, around and down.

Q. That is a mechanical amusement? Was that
30 in operation?

A. That was in operation.

Q. Did you notice the passengers had to pay an extra fare for that?

A. There was an admission charged according to the sign outside, five cents for tickets, five cents a ride.

Q. Did you see anybody paying admission to go on?

A. I saw people going on, I don't know as I saw them paying.

Q. The barrel of love you mentioned; what is that?

A. That is a barrel that they work up and down, and start by attendants, I thing there were two at the time of this, a rope device that works this thing. They strap the people in.

Q. Did you see that in operation? 10

A. Yes.

Q. What is the razzle-dazzle?

A. The razzle-dazzle is a round affair, goes around and then works up and down.

Q. Run by machinery?

A. No, I thing that is run by hand power.

Q. The barrel of love is run by hand power and power of gravity?

A. I should judge that would be it, yes, sir.

Q. Big swing. What was that? 20

A. I think they call that Uncle Sam swing.

Q. Is that a mechanically run affair?

A. No, that was worked by the employees.

Q. Was that in operation?

A. Yes.

Q. House of trouble. What is that?

A. Sort of lattice frame affair they go in and try to get out.

Q. What was babyland?

A. To tell you the truth, I didn't pay much at- 30
tention to babyland. I just gave it a casual glance. It was slides and see-saws. I didn't pay much attention to that.

Q. You mentioned the mixer. What is that?

A. Mixer is a device that they get in and they start sort of elevated in the center of this thing. They

fall, throws them in the sides of this device and stay in the position that they fall until it slows up and stops.

Q. That is a mechanically run and operated device?

A. Yes.

Q. Did you see anybody on it?

A. Yes, quite a few.

Q. The large soup bowl. What is that?

10 A. That you go down a slide into that shape into this bowl.

Q. Any machinery connected with it?

A. I didn't see any machinery.

Q. Moving stairway. That is run by machinery?

A. Yes, that is (indicating).

Q. Anybody using it?

A. Yes.

Q. Turkey trot?

A. Yes, that is one of those affairs (indicating).

20 Q. That is run by machinery?

A. Yes.

Q. Anyone using it when you saw it?

A. Yes, sir.

Q. The barrel of love, that is run by machinery?

A. That is revolved by hand power.

Q. Was that in operation when you saw it?

A. Yes, sir.

Q. The human roulette; was that in operation?

A. Yes, sir.

30 Q. That is also run by machinery?

A. Yes.

Q. These different amusements that you mentioned as having been operated by machinery; did they make any noise that you heard?

A. Well, not so much noise. The public make more noise than the devices.

Q. Have you been on the Steeplechase Pier during the week days?

A. Not for some time. A long while ago.

Q. How were the men dressed, the attendants on that day?

A. Red coats and caps.

Q. Did they make any announcement inviting you to try these different affairs?

A. I heard no announcements.

Q. Did you hear any announcement in there, was 10
any made in the operation of the Johnson family
in respect to giving away something or anything
else?

A. Yes.

Q. What was that?

A. Three balls for five cents. Attracting the public to hit the coon and get a prize or souvenir.

Q. Did you see anybody get any prize or souvenir?

A. See any what?

Q. Any prizes?

20

A. Yes, they had a few souvenirs there.

Q. What was the character of them?

A. I didn't pay much attention to the prizes.

Cross-examination.

By Mr. Coulomb:

Q. You say that you could hear the noise of the people on the Steeplechase Pier at 2:15? 30

A. 3:15.

Q. Did you hear the people on the Boardwalk laughing and talking?

A. Well, you could tell the difference between the Boardwalk and Steeplechase Pier.

Q. Could you hear the people on the Boardwalk laughing and talking?

A. Did I hear them?

Q. Yes.

A. I wasn't interested in them.

Q. Perfectly silent was the Boardwalk?

A. No, you could hear them walk.

Q. Was there any other noise other than the walk of the people on the Boardwalk?

A. I didn't pay any attention.

Q. You didn't hear any other noise?

10 A. I didn't pay any other attention to any other noises.

Q. Did you hear any noise?

A. I don't know as I did. You could hear people talk.

Q. Could you hear anybody on the beach?

A. No, I couldn't hear anybody on the beach.

Q. Notice whether any of the stores were open?

A. I didn't pay any particular attention.

20 Q. How far did you walk on the Boardwalk when you were going to the Steeplechase Pier?

A. From Kentucky Avenue to Steeplechase Pier.

Q. Didn't notice where any stores were open on your journey?

A. I didn't really notice.

Q. Know whether the Steel Pier was open?

Mr. Sheen: Objected to as immaterial. It does not apply and it don't make any difference.

30 The Court: Objection sustained.

Q. Notice whether the Criterion Moving Picture Theater was open?

Mr. Sheen: Objected to.

Q. Notice as to whether the Virginia Moving Picture House was open?

(Question repeated.)

Mr. Sheen: Objected to.

The Court: Question overruled.

Q. Did you notice whether the Bijou Moving Picture Theater was open?

The Court: Question is overruled.

10

Q. The Johnson family device, or attraction, was in the building, was it not?

A. Yes.

Q. Far end?

A. Far end of the building.

Q. And babyland was in the building?

A. Yes.

Q. What other device was in the building?

A. Well, the turkey trot and the barrel of fun, 20 human roulette, slides, moving stairway, mixer, soup bowl.

Q. Where was the shooting gallery?

A. Extreme end of the pier.

Q. And Ferris wheel?

A. Out on the—outside of the pier.

Q. Merry-go-round?

A. Close by.

Q. Were they many people on the pier?

A. Quite a few, Sunday.

30

Q. Were they orderly or disorderly?

A. I didn't see any disorder.

Q. Did you use any of the devices, either of the different things, the merry-go-round, the Ferris wheel, the shooting gallery?

A. No, sir.

Q. You paid twenty-five cents admission at the entrance of the pier?

A. Yes.

Q. Did you get a card after you got on?

A. No cards.

By the Court:

Q. How do you know that you would have to pay
10 extra for the Johnson family, the Ferris wheel, the merry-go-round or shooting gallery?

A. The signs were up, the Johnson family, and very noticeable at that, advertising, where they called your attention by word of mouth.

Q. Are the other devices advertised by signs?

A. By signs. The shooting gallery, I don't think, had a sign.

Q. Does the merry-go-round advertise?

A. Five cents a ride, six tickets for a quarter.

20 Q. Is that advertised by a notice?

A. Sign.

Q. How far did you travel on the Boardwalk, between what points, on Sunday?

A. On Sunday?

Q. Yes.

A. From the swimming pool. After I left the pier from the swimming pool.

Q. Where is that located?

A. I don't know.

30 Q. Rhode Island Avenue?

A. Rhode Island to Georgia Avenue.

Q. And did you pass by other amusements that are open on week days as a rule?

A. Yes.

Q. Now, what other amusements or games did you see running, other than the Steeplechase Pier?

Mr. Coulomb: Objected to.

A. Not any.

The Court: You asked about the moving pictures, and according to the ordinance the moving pictures are allowed to run.

Q. Now, I want to find whether any of the other amusements were running. I think you will agree with me that the Steeplechase Pier should not have a monopoly on any other amusement in Atlantic City. 10

Mr. Coulomb: That is the way I feel about it. That is the very thing I tried to find out.

The Court: You asked about the Steel Pier and about the moving picture houses?

Mr. Coulomb: I did. 20

The Court: According to the ordinance it wouldn't make any difference whether they were running or not, as far as the ordinance is concerned.

Mr. Coulomb: As far as the ordinance is concerned I think it does.

The Court: The ordinance says musical concerts, it allows these pastimes to run. 30

Mr. Coulomb: Well, I have my objection.

The Court: I allow the question to stand as the Court asked.

Mr. Coulomb: Allow me an exception.

(Exception noted for defendant.)

The Court: I might say the purpose of my question is not only to give me information relative to the running of amusements on the Steeplechase Pier, but also in case there is a conviction as to what penalty should be imposed.

10

Mr. Coulomb: This witness in answer to my question said he didn't know what was going on.

The Court: You asked him about laughing and talking on the Boardwalk.

Mr. Coulomb: I asked him about a number of things and he didn't pay any attention whatever. He don't know whether the Steel Pier was open and
20 moving pictures.

The Court: Some of these questions he said no to before the objection was interposed.

Mr. Sheen: I would suggest that a stipulation that we have, that is to the effect that the Steeplechase Pier is within the City of Atlantic City, and is operated by the Atlantic Amusement Company, that William Fennan is employed by the Atlantic
30 Amusement Company and did assist in the entire conduct of these several amusements; that all this case could be readily consolidated as far as the testimony is concerned, but as far as any question of the Court in sentencing —

Mr. Coulomb: I don't want you to repeat this testimony. Let that stand in all the other cases.

The Court: Do you want a formal stipulation?

Mr. Coulomb: I think that is sufficient.

I want to move further for a dismissal of these complaints on the same grounds as at the opening, as if the same grounds were repeated.

The Court: I will consider that they are repeated in each case.

Mr. Coulomb: On the further ground, if your Honor please, this ordinance does not appear to have been legally passed.

10

The Court: In what respect?

Mr. Coulomb: As I understand the law, the ordinance has got to be approved by the Commissioners, and don't appear to have been done.

The Court: That copy that you have is my copy. I am just using it for counsel.

20

Mr. Coulomb: It may be that the original shows otherwise. We want the benefit of my objection. It may be that the original was legally passed.

The Court: As I understand, that copy was loaned to the Court just for the Court's information.

Mr. Coulomb: It is the ordinance upon which this case must stand or fall, and whether the original ordinance is passed I don't know. I want to offer the copy I have before me.

30

The Court: You mean that the amendment should have been signed by at least three Commissioners?

Mr. Coulomb: That may have been done, but it don't appear from this certificate.

The Court: It was done, but that certificate is not an exact duplicate of the City Clerk.

10 Mr. Coulomb: I have my objection there for what it is worth and I would like to have this noted. We take an objection to apply to all of those cases.

The Court: Your objection is merely technical.

Mr. Coulomb: It is very substantial. The very thing I want to make is that it is not technical.

The Court: Give him the benefit of his objection in every case. All his objections are overruled.

20 (Exception noted for defendant.)

DEFENDANT'S TESTIMONY.

WILLIAM FENNAN, SWORN.

Direct examination.

30 By Mr. Coulomb:

Q. Mr. Fennan, you are the manager of the Steeplechase Pier?

A. Yes.

Q. And that pier is operated by what company?

A. Atlantic Amusement.

Q. Do you pay any license other than the pier

license for the operation of the Johnson family, the Ferris wheel, the merry-go-round, or the shooting gallery?

Mr. Sheen: Objected to.

Mr. Coulomb: I asked him whether he paid any license other than the pier license, naming the Johnson family, the Ferris wheel, the merry-go-round and shooting gallery.

10

Mr. Sheen: Objected to as absolutely immaterial. He is not tried under the Mercantile Ordinance, he is tried under the Vice and Immorality Ordinance.

Mr. Coulomb: I say it has a great deal to do with it, that it makes a great deal of difference. We pay one license for every device on it.

By the Court:

20

Q. Let me ask if you paid a license for them this year?

A. I don't think so, no.

The Court: You don't mind if I ask you the question?

Q. Did you have the merry-go-round on the pier last year?

30

A. No.

Q. Did you have the Ferris wheel there last year?

A. No, sir.

Q. Did you notify the Mercantile Appraiser that you charged an extra fare for the Ferris wheel?

A. I wouldn't say for sure.

The Court: Didn't the Mercantile Appraiser say about all amusements to which they charge a separate amount, they would charge a separate license fee?

Mr. Coulomb: That is what he said, there were certain things that were not operated by the Atlantic Amusement Company, the photograph and shooting gallery, the post card place and maybe one
10 or two others that paid separate licenses.

Mr. Coulomb: I want to make the offer that we intend to prove that the Mercantile Appraiser has only charged one license for the licensing of the Steeplechase Pier, that if in that case it gives him the right to operate the various devices that are mentioned in the sixteen or seventeen complaints,
20 and my offer is overruled.

The Court: The offer is overruled.

(Exception noted for defendant.)

REASONS IN CASES NOS. 1, 2, 3, 4, 5.

(Filed Sept. 24 by consent.)

NEW JERSEY SUPREME COURT.

WILLIAM H. FENNAN,
Prosecutor,

VS.

CITY OF ATLANTIC CITY and
EDMUND C. GASKILL, JR.,
Recorder,

Defendants.

ON CERTIORARI.

REASONS IN CASES
Nos. 1, 2, 3, 4 AND 5.

10

20

WILLIAM H. FENNAN, the prosecutor, assigns the following reasons why the ordinance and conviction removed into the Supreme Court by the above writs of certiorari should not be set aside, annulled and for nothing holden:

1. Because the prosecutor was convicted of five different offenses and violations of said ordinance, whereas if there should have been any conviction, there should only have been one conviction, the five offenses complained of amounting to but one violation of said ordinance. 30

2. Because the operation of a shooting gallery was not a violation of the ordinance.

3. Because the operation of the "Johnson Family," was not a violation of the ordinance.

4. Because the operation of a Ferris wheel was not a violation of the ordinance.

5. Because the operation of a merry-go-round was not a violation of the ordinance.

10 6. Because the operation of a razzle-dazzle was not a violation of the ordinance.

7. Because said amusement devices which it is alleged the prosecutor operated are on the private property of the Atlantic Amusement Company, of which the prosecutor is the manager.

20 8. Because the ordinance is in violation of the Constitution of New Jersey and the Constitution of the United States, in that it excepts moving picture shows and musical concerts from its operation.

30 9. Said ordinance is invalid because it excepts from its provisions moving picture shows and musical concerts, whereas, the Vice and Immorality Act of the State of New Jersey prohibits moving picture shows and musical concerts from being performed on the Christian Sabbath, or the first day of the week, commonly called Sunday.

10. Because said ordinance is class legislation in that it excepts from its provisions musical concerts and moving picture shows.

11. Because one admission is charged to the Steeplechase Pier owned by the Atlantic Amuse-

ment Company, upon which all the amusements in question were operated, and the payment of that admission entitles the person admitted to the use of all of the amusements complained of, and therefore, if there could be any conviction, there could only be one conviction under said ordinance.

12. Because the City of Atlantic City has no right under its charter powers to pass ordinances in violation of the Constitution and statutes of the State of New Jersey or the Constitution of the United States. 10

13. Because the City of Atlantic City under its charter powers has no right to pass ordinances attempting to regulate or prohibit Sunday amusements.

14. Because the City of Atlantic City under its charter powers has no right to pass ordinances to regulate matters already regulated and provided for by the statutes of the State of New Jersey. 20

15. Because the City of Atlantic City, under its charter powers, has no right to pass ordinances to regulate matters already regulated and provided for by the statutes of the State of New Jersey in a manner different from that provided for in the statutes of the State of New Jersey concerning such matters. 30

16. Because there could be but one violation of said ordinance by any one person on any one Sunday.

17. Because the gist of the offense is the violation of the sanctity of the Christian Sabbath, com-

monly called Sunday, and there can be but one violation of that sanctity by any one person on any one day.

18. Because said ordinance is in divers other respects illegal and oppressive.

19. Because said convictions are in divers other respects illegal and oppressive.

10

BOURGEOIS & COULOMB,
Attorneys for Prosecutor.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

WILLIAM FENNAN,
Prosecutor-Appellant,

VS.

CITY OF ATLANTIC CITY and
EDMUND C. GASKILL, JR.,
Recorder,
Defendants-Respondents.

ON CERTIORARI.

CASES 1, 2, 3, 4 and 5.

BRIEF OF HARRY WOOTTON, CITY SOLICI-
TOR, JOSEPH B. PERSKIE, ASSISTANT
SOLICITOR, ATTORNEYS OF DEFEND
ANTS.

FACTS.

William Fennan, the manager of the Steeplechase Pier, of Atlantic City, New Jersey, was convicted before the Recorder of Atlantic City for operating five different amusements on the Steeplechase Pier, on the first day of the week, commonly known as Sunday, in violation of an ordinance entitled "An Ordinance for the Suppression of Vice and Immorality," approved August 13, 1901, and two several amendments thereto, approved, respectively, September 14, 1909, and May 14, 1915. Five separate com-

plaints were filed. The first, for operating a device known as the "Shooting Gallery"; the second, for operating a device known as the "Johnson Family"; the third for operating a device known as the "Ferris Wheel"; the fourth for operating a device known as the "Merry-go-Round"; and the fifth, for operating a device known as the "Razzle Dazzle." All of these devices were upon a pier extending from the Boardwalk out into the Atlantic Ocean, known as the Steeplechase Pier. Admission to the pier was secured by the payment of twenty-five cents at the entrance and admission to four of the devices for the operation of which the prosecutor was convicted, was secured by the payment of an additional admission fee, it appearing by the testimony that the general admission fee included a ride on the "Razzle Dazzle."

Before the trial of the first case, that for the operation of the "Shooting Gallery," counsel for the prosecutor moved to dismiss the complaints for the reasons stated in his motion. (Case, pages 57 and 58.) After the city had rested its proof upon the first complaint, counsel for the prosecutor renewed the motion to dismiss the complaints "on the same grounds as at the opening, as if the same grounds were repeated." (Case, page 97.) It was stipulated between counsel that the testimony in the "Shooting Gallery" case should stand as the testimony in all of the other cases. Five writs of certiorari were granted to these five convictions. The first, to review the "Shooting Gallery" conviction; the second, to review the "Johnson Family" conviction; the third, to review the "Ferris Wheel" conviction; the fourth, to review the "Merry-go-Round" conviction, and the fifth, to review the "Razzle Dazzle" conviction. The ordinance, for the

violation of which the prosecutor was convicted, is also before the Court of Review under the mandate of the writs.

ARGUMENT.

The prosecutor, under reason one, proposes: "There should have been only one conviction for the violation of the ordinance in question." Evidently, then, it is conceded that the evidence was sufficient to justify the verdict of "guilty" for maintaining and operating the "Shooting Gallery" on the first day of the week, commonly called Sunday, in violation of the ordinance, and there seems to be, then, in the prosecutor's mind, no complaint as to the validity of that conviction, unless it be found in his subsequent reasons attacking the legality of the ordinance itself.

"Certiorari to review errors of law in a judgment of a court proceeding otherwise than at common law, partakes of the nature of a writ of error, and is ineffective to review matters raised for the first time in the reviewing court."

Schmidt vs. Law, 83 N. J. L. 635.

It will be observed that at the close of the case, counsel for the prosecutor utterly failed to present any objection to the finding of a verdict or the entering of a judgment of conviction in any of the five cases. Apparently, conviction in the first case was conceded to be lawful, unless its legality could be attacked upon the ground of the invalidity of the ordinance. Therefore, the only challenge which the prosecutor could make to the finding of a verdict

and the entering of a judgment in the other four cases, would be to challenge the jurisdiction of the Court upon the ground that the offense was the operation of the pier itself upon the Sabbath day. The jurisdiction of the Court was not so challenged. No objection was made below to the entering of judgment for this reason, and no motion was made except to renew the motion to dismiss the complaints. The reason would seem to be without force. But there is another reason why the prosecutor should not prevail upon this theory. Quoting from the ordinance (Case, page 26), it will be found in Section 1:

“That no dancing, playing at nine pins, ten pins, bowls, any flip-flop, loop-the-loop, old mill, shooting gallery, carrousels, knock-down-the-baby games, or any other games or amusements, * * * * * shall be done, performed, used, practiced or carried on or conducted, etc., on the Christian Sabbath Day, within the limits of the City of Atlantic City.”

The ordinance is distinguished from the cases cited by counsel for the prosecutor in that the doing of the specified things, for which the prosecutor was convicted, are prohibited, while in the case cited, the prohibition was in one case against having a theatre open on Sunday, in another case, exercising a trade or business on Sunday, etc. The distinction is plain.

The several convictions may be justified upon the further theory that while the property of the Steeplechase Pier is an entity, nevertheless, there is thereon conducted several separate and distinct businesses, games, and amusements to which separate admissions are charged. A person purchasing a ticket at the pier entrance, and entering there-

on is entitled to use certain amusements, of which the "Razzle Dazzle" is one; but cannot obtain entrance to any of the other four amusements, for the operation of which the prosecutor was convicted, without the payment of a separate and distinct admission fee. The operation, therefore, of the other four amusements, constitute distinct and separate offenses.

The second reason of prosecutor that "The ordinance is invalid because it exempts from its operation moving picture shows and musical concerts," involves only the amendment of the ordinance, approved May 14, 1915 (Case, page 26). This reason cannot avail the prosecutor. By the terms of the original ordinance (Section 1, Case, page 1), the offenses of which the prosecutor was convicted were prohibited. If for any reason the amendment approved May 14, 1915 (Case, page 26), is void, Section 1 of the original ordinance stands without amendment, and in that event, while the amendment may fail, nevertheless, the convictions should stand.

"By the repeal of a repealing statute, the original statute is revived."

James vs. Dubois, 16 N. J. L. 285.

"Although the amending Act by its terms repeals all parts of former Acts inconsistent with its provisions, it will not have the effect of repealing the section of a prior Act where the latter section is unconstitutional," under title "Amendment and Repeal of Ordinances, McQuillan Municipal Ordinances, First Edition, page 333, Section 205."

The next point urged by prosecutor, to wit, "the City of Atlantic City has no power under its charter

to increase the statutory penalty for operating or conducting amusements on Sunday," seems to be successfully answered by Section 14, Paragraph II, Pamphlet Laws of 1902, page 284, to wit: "to prevent vice, drunkenness, immorality, etc.," and by Section 16, wherein it is provided: "In all cases where by the provisions of this Act the City Council shall have authority to pass ordinances on any subject, they may prescribe a penalty or penalties for the violation thereof, either by imprisonment in the city or county jail not exceeding ninety days, or by a fine not exceeding two hundred dollars and imprisonment in the workhouse, city or county jail, not exceeding ninety days, in default of the payment of such fine." In this respect, the city is given concurrent power with the State for the suppression of vice and immorality. *State vs. Plunkett*, 18 N. J. L. page 5, is in point:

"An offense which is punishable by penalties authorized and imposed by the charter and ordinances of a city may, at the same time, be indictable under the general laws of the State, although committed within the city. The power delegated to the city does not narrow the application of the general law."

In addition to the sections of the charter above cited, and by the provisions of Section 15, Pamphlet Laws of 1902, the city has power to make and establish such other ordinances, not contrary to law, as it may deem necessary and proper for the good government, order, protection of persons and property, etc. This penalty clause has been sustained by this Court in *Atlantic City vs. France*, 75 N. J. L. 910, 70 Atl. 163.

The attention of the Court is also called to the

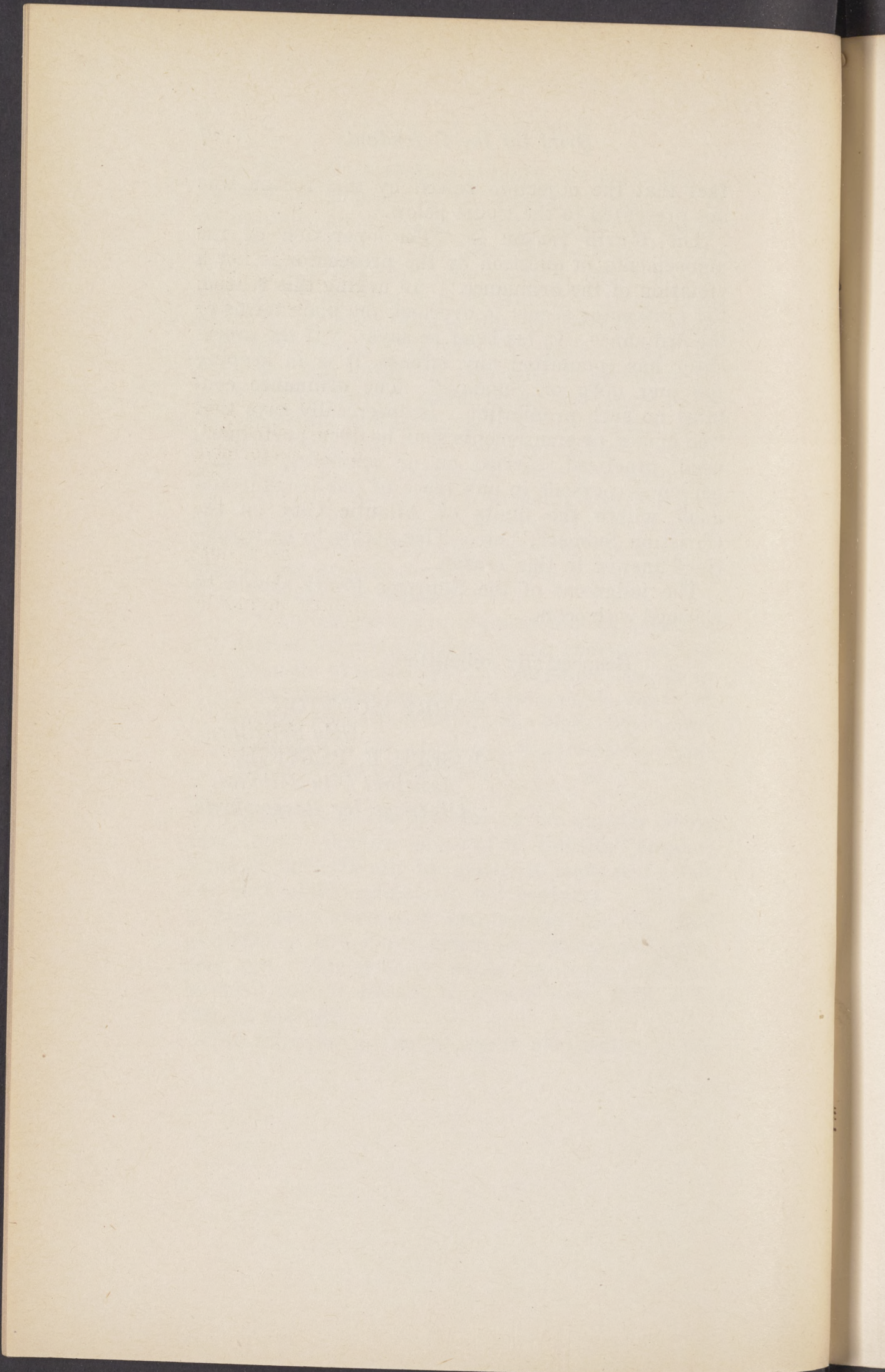
fact that the objection raised by this reason was not presented to the Court below.

The fourth reason is "The operation of the amusements in question by the prosecutor is not a violation of the ordinance." In urging this reason, the prosecutor seems to overlook the plain terms of the ordinance. In his brief he says: "If the prosecutor has committed any offense, it is in keeping the pier open on Sunday." The ordinance contains no such prohibition. It specifically says that "no games, or amusements shall be done, performed, used, practiced, carried on or conducted by any person or persons in any place of public entertainment within the limits of Atlantic City on the Christian Sabbath," etc. This seems to be a sufficient answer to this reason.

The judgment of the Supreme Court should be affirmed with costs.

Respectfully submitted,

HARRY WOOTTON,
City Solicitor,
JOSEPH B. PERSKIE,
Assistant City Solicitor,
Attorneys for Respondents.



New Jersey Court of Errors and Appeals

WILLIAM H. FENNAN,
Prosecutor-Appellant,
vs.
CITY OF ATLANTIC CITY, and ED-
MUND C. GASKILL, JR., Re-
corder,
Defendants-Respondents.

On Certiorari.
On Appeal.
Five Cases.

BRIEF OF BOURGEOIS & COULOMB, ATTORNEYS FOR PROSECUTOR- APPELLANT

The appeals in these five cases bring before this Court for review five judgments entered by the Supreme Court sustaining the judgments of conviction by the Recorder of Atlantic City for the violation of an Ordinance of Atlantic City, entitled "An Ordinance for the Suppression of Vice and Immorality." The Writs of Certiorari also took in the Supreme Court for review the Ordinance itself.

The violation of the Ordinance upon which the convictions were had consisted of operating certain amusements on Sunday. The appellant was fined \$200.00 on each of the convictions, with an alternative penalty that if the fines were not paid,

he should be imprisoned for thirty days upon one of the convictions, and for a day each upon the other convictions, which terms of imprisonment were to run consecutively.

Facts

The facts, briefly, are as follows: The appellant is the manager of the Atlantic Amusement Company, which operates an amusement pier in Atlantic City known as the Steeple-chase Pier. On this pier there are a number of amusements, all of which are operated by the Atlantic Amusement Company under the management of the appellant. A fee of twenty-five cents is charged for admission to the pier, and none of the amusements can be used by any person who has not paid the twenty-five cents admission. The offenses for which the appellant was convicted took place on the same day, namely, the 26th day of July, 1915, the evidence being obtained by two policemen who purchased admission tickets and paid twenty-five cents each for the same.

There are a number of amusement devices on the pier to the use and enjoyment of which everyone who has paid an admission fee is entitled without the payment of any extra fee excepting the shooting gallery, the Johnson family (which is a species of Hit-the-Baby-Game), the Ferris wheel, and the Merry-go-round, for the use of which an extra fee is charged.

The appellant was convicted of operating the four above-named devices, and also of operating a device known as the Razzle Dazzle, for the enjoyment of which no extra fee was charged. The appellant was also convicted of operating a num-

ber of other devices, for the use of which an extra fee was charged, but sentence was suspended on all of those convictions.

Points Involved

The appellant assigns nineteen reasons why the convictions and ordinance should be set aside, and eighteen grounds of appeal. These reasons and grounds of appeal may be briefly summarized as follows:

1. There should have been only one conviction for the violation of the ordinance in question.

The 1st, 11th, 16th and 17th reasons and the 1st, 7th, 12th and 13th grounds of appeal are addressed to this phase of the case.

2. The ordinance is invalid because it exempts from its operation moving picture shows and musical concerts.

The 8th, 9th, 10th, 12th and 15th reasons and the 4th, 5th, 6th, 8th, 9th, 10th, 11th, 14th, 15th and 16th grounds of appeal are addressed to this phase of the case.

3. The City of Atlantic City has no power under its charter to increase the statutory penalty for operating or conducting amusements on Sunday.

The 13th and 14th reasons and the 8th, 9th, 10th and 11th grounds of appeal are addressed to this phase of the case.

4. The operation of the amusements in question by the prosecutor is not a violation of the ordinance.

The 2nd, 3rd, 4th, 5th, 6th and 7th reasons and the 2nd, 3rd, 7th, 12th and 13th grounds of appeal are addressed to this phase of the case.

Argument

I

Assuming that the prosecutor was guilty at all, there should have been only one conviction.

The gist of the offense consists in the violation or breach of the Christian Sabbath commonly called Sunday.

The appellant contends that for such a breach or violation there can be but one conviction for the reason that one person can only be guilty of one offense on the same Sunday; and that particularly is this true when the offense consists in the operation of a certain number of amusement devices all on the one pier, and none of which can be used or enjoyed excepting by a person who has paid an admission to that pier.

The earliest case on this subject is the case of *Crepps vs. Durden*, Cowp. 640. The opinion in this case was written by Lord Mansfield.

The statute 29 Car. II, c. 7 provided:

“ ‘That no tradesman or other person shall do or exercise any worldly labour, business, or work of their ordinary calling on the Lord’s Day, work of necessity and charity only excepted.’ A penalty of five shillings was affixed to each offense, and it was made cognizable by a justice of the peace. Crepps, a baker, was convicted before Durden, a Justice by four separate convictions, ‘of selling small hot loaves of bread the same not being any work of

charity, on the same day being Sunday,' in violation of that statute. Durden issued four warrants, one on each conviction, to officers who, under them, levied four penalties, of five shillings each, on the goods of Crepps. The latter sued Durden and the others, in trespass, in the King's bench in 1777, and had a verdict before Lord Mansfield, and three sums of five shillings each, subject to the opinion of the Court. The first question raised was whether, in the action of the trespass, and before the convictions were quashed, their legality could be objected to; and, next, whether the levy under the last three warrants could be justified. It was contended for the plaintiff that the last three convictions were in excess of the jurisdiction of the justice, because the offense created by the statute was the exercising of a calling on the Lord's Day, and if the plaintiff had continued baking from morning to night, it still be but one offense; that the four convictions were one and the same offense; and that an action would lie against the justice and the officers."

Lord Mansfield in writing the opinion of the Court said:

"Here are three convictions of a baker, for exercising his trade on one and the same day, he having been before convicted for exercising his ordinary calling on that identical day. If the Act of Parliament gives authority to levy but one penalty, there is an end of the question; for there is no penalty at common law. On the construction of the Act of Parliament the offense is 'ex-

exercising his ordinary trade upon the Lord's Day'; and that without any fractions of a day, hours or minutes. It is but one entire offense. whether longer or shorter in point of duration; so whether it consists in one, or of a number of particular acts. The penalty incurred for this offense is five shillings. There is no idea conveyed by the Act itself that, if a tailor sews on the Lord's Day, every stitch he takes is a separate offense; or, if a shoemaker or a carpenter work for different customers at different times on the same Sunday, that those are so many separate and distinct offenses. There can be but one entire offense on one and the same day. That this is a much stronger case than that which has been alluded to, of killing more hares than one on the same day. Killing a single hare is an offense; but the killing ten more on the same day will not multiply the offense, or the penalty imposed by the statute for killing one. Here, repeated offenses are not the object which the legislature had in view in making the statute; but singly, to punish a man for exercising his ordinary trade and calling on a Sunday. Upon this construction the justice had no jurisdiction whatever in respect of the three last convictions."

The above case of *Crepps vs. Durden* has since been cited with approval in the English Courts.

In the case of *Apothecaries Company vs. Jones*, 1 Q. B., 1893, page 89, it appeared that under the Apothecaries Act of 1815, any person who shall act or practice as an apothecary without a certificate is liable to a penalty for every such offense.

The defendant practiced as an apothecary without a certificate, and gave medical advice and supplied medicine to three different persons at different times on the same day. He was sued for three penalties. It was held that the words "act or practice as an apothecary" were directed against a habitual or continuous course of conduct, and the defendant was not guilty of a separate offense in attending each of the three persons, and was only liable to one penalty.

Polk, B., writing the opinion of the Court, said, at page 92:

"I should have been content, under these circumstances, to say no more than that I agree with what is said by the Judge below, but that during the argument, counsel for the appellant called our attention to the fact that in none of these decisions was the matter fully argued, and that they were founded, no doubt, in great measure upon the well-known judgment in the case of *Crepps vs. Durden* (1), where it was held that a baker who sold a number of hot loaves on the same Sunday could not be convicted of more than one offence. The prescribing for and administering medicine to different patients he argued, could not properly be compared to the selling of different rolls, especially as in the former case an offence against each separate patient would seem to be involved. There is no doubt great force in this remark, and it might afford a good ground for amending the provisions of the Apothecaries Act; but as that Act now stands, its provision as to the offence created by it is identical with

that of the Sunday Trading Act. The language of the 29 Car. 2, c. 7, is: 'Whoever shall do or exercise any worldly labour, business, or work of their ordinary calling on the Lord's Day,' etc. That of the Apothecaries Act is: 'If any person shall *act* or *practice* as an apothecary,' etc. And both Acts go on to provide that every person so offending 'shall for every such offence forfeit,' etc. It appears to me, therefore, to be clear that, however the subject-matter and character of the offences created by the two statutes may differ, they are both directed against an habitual or continuous course of conduct, and not against an individual act, and therefore they ought both to receive the same construction."

Hawkins, Jr., in one of the opinions in this case, said at page 96:

"The same reasons which guided the Court in *Crepps vs. Durden* (1)—*viz*: that the *offence* created by the statute can alone be made the subject of conviction—the overt acts done in the commission of that offence are but so many pieces of evidence—had already been acted upon in the cases of *Marriott vs. Shaw* (2), and *Reg vs. Mathews* (3), in proceedings to recover penalties under statute 5 Anne, c. 14, s. 4, which forbade the keeping by unqualified persons of dogs and engines for the destruction of game. It was there sought to recover a separate penalty for each hare killed; but it was decided that, the *offence* being the keeping and using of the dogs for

the forbidden purpose, only one offence could be committed on the same day, and that the number of hares killed was immaterial. It was said by the Court in that case: 'If a man not qualified go a hunting and kill never so many hares upon the same day, he would forfeit but one five pounds, for it is but one offence.' This may be further illustrated by taking the case of two men charged each with using a gun to kill game without a license; if they shot through a whole day from morning till night each would be guilty of one offence only, and each separate use of the gun by firing a shot would not constitute a separate offence. If it were otherwise, a man who fired twenty shots would incur penalties amounting to 100 £, whilst one who for want of opportunity only fired one shot was only subject himself to a fine of 5£."

In the case of *Llewellyn vs. Glamorgan Ry. Co.*, 1 Q. B. 1898, p. 473, it appeared that the Railway Act of 1845 provided that if a railway company, in the exercise of their powers, found it necessary to cut through, raise, sink, or use any part of any road, either public or private, so as to render it impassable or dangerous, they should before commencing such operations, cause a sufficient road to be made instead of the road to be interfered with, and in default of their so doing, should be liable to a penalty.

It was held that the owner of the soil of any part of that portion of a private road which had been interfered with might sue to recover the penalty, but that only one such penalty is recoverable.

Chitty, L. J., in delivering the opinion of the Court said, page 476:

“There is another point. The penalty is 20£ for every day during which the offence is committed. We think it is clear on the language of the statute itself, and without having recourse to the principle on which the leading case of *Crepps vs. Durden* (1), was decided, that one penalty and one penalty only is inflicted for every day. Wright, J., seems to have been inclined to think that more than one penalty of 20£ for each day was recoverable. We are unable to accept that suggestion. But we entirely agree with him in the opinion that the penalty is not apportionable: it is one entire sum of 20£.”

The case of *Crepps vs. Durden* has also been cited with approval in the United States.

In the case of *Muckenfuss vs. State of Texas*, 20 L. R. A. (N. S.), 783, it was held that:

“Only one conviction can be secured for giving several performances in the theatre on Sunday, under a statute providing that any proprietor of any place of amusement who shall permit it to be open on that day shall be fined.”

The Court in its opinion said, page 785:

“Applying any test to this character of case under the statute and facts as disclosed by this record, appellant’s contention is correct that the State can only carve one offence of opening a theatre on Sunday. In order for the State to carve prosecutions in cases of this character, the statute must prescribe, or the legislative intent must be clear, that it was the purpose to make each act or performance punishable. This cannot be done under the general inhibition of

the exhibition confined to one day. It is manifest that the legislative intent was not to carve offences on this day, or permit prosecutions for each separate exhibition; and it is equally patent that it was intended to punish such exhibitions only when they occurred on Sunday, treating the day as an entirety. We are therefore of opinion that appellant's plea of former conviction was well taken, and sustained by the law and the facts."

In the case of *State vs. James*, 18 L. R. A. (N. S.), 617, it was held that several sales made by a merchant on the Lord's Day constitutes but one offence under one statute providing a penalty for exercising one's ordinary trade on that day.

In the case of *Friedborn vs. Commonwealth of Pennsylvania*, 113 Pa. St., 242, 57 Am. Rept., 464, it was held that there could be but one violation by the same person on the same day of a statute prohibiting business on Sunday, and but one penalty can be inflicted.

Gordon, J., in writing the opinion of the Court, said:

"The Act of 1794 imposed but one penalty, a fine of four dollars, for the violation of the Sabbath Day, and as in law, unless otherwise provided by the Legislature, there are no fractions of a day, it is clear that by the same person there can be but one such violation and consequently but one fine." Citing *Crepps vs. Durden*.

In the United States Supreme Court, the case of *Crepps vs. Durden* was cited in the case of *In re Snow*, 120 U. S., 274, 30 L. Ed., 658, in which

Blatchford, J., in writing the opinion of the Court, applied the doctrine of *Crepps vs. Durden* to a case where a defendant was accused of having cohabited with more than one person and held that no matter how many persons or how long the time, it all consisted of but one offense.

In the case of *Sturgis vs. Spofford*, 45 N. Y., 446, the law under consideration was the Act of 1853, providing a penalty for employing an unlicensed pilot. The proof showed that only one pilot had been employed, but that he had been employed to operate forty-six boats, and a fine of one hundred dollars for each offense was imposed. The Court reversed the judgment for forty-six hundred dollars, and said:

“It is a wholesome rule not to allow a recovery for aggregated penalties unless the language of the statute clearly requires it.”

In the case of *Fisher vs. N. Y. C. & H. R. R. Co.*, 46 N. Y., 644, the defendant was accused of having asked for and received a greater rate of fare than that allowed by law on a number of occasions. The penalty for each offense was fifty dollars. The defendant insisted that but one penalty could be collected for all of the offenses up to the date of the bringing of the action, and the Court held as follows:

“My conclusion is that but one penalty can be recovered, upon the statute under consideration, for all acts committed prior to the commencement of the action. If after this it is again violated, another may be recovered in another action commenced thereafter, and so on as long as violations

continue. This will only tend to put a stop at once to the extortion when it is committed knowingly, but where it is done under a mistake as to its right, will give it notice that its right to charge the amount claimed is challenged, and will induce a cautious examination of the question, and an abandonment of the claim before a ruinous amount of penalties have been incurred. * * * This leads to the modification of all the judgments by reducing the recovery to one penalty and the excess paid."

The Supreme Court in dealing with this question, decided adversely to the appellant's contention upon the ground that the ordinance prohibited "Sunday dancing, Sunday nine-pins, etc., each specifically and according to the same qualifications."

We respectfully submit that the Supreme Court erred in its conclusion in this respect.

The ordinance, being a penal ordinance, must be construed strictly and thus construed, it does not admit of the interpretation given to it by the Supreme Court; *i. e.*, that it was directed towards the prohibiting of the operation of any particular device or amusement on Sunday. Regard must be had to the fundamental principle underlying all Sunday Laws, which is as we understand it, the keeping inviolate of the first day of the week, commonly known as Sunday or the Christian Sabbath. The offense consists not in operating a particular amusement on Sunday but in violating the sanctity of the day by the operation of the particular amusement device in question. If the purpose of the ordinance is to preserve the sanctity of the Christian Sabbath, then the gist of the offense

would be the violation of that sanctity. The operation of none of the devices on the Steeplechase Pier could be said to be a vicious or immoral act. They are all innocent, playful amusements. There is no evidence of disorder, loud or terrifying noises, nor is there any evidence from which it can be inferred that a nuisance was being maintained.

It will be seen, by examining the terms of the statute, under consideration in the case of "*Crepps vs. Durden (supra)*," that it is practically in the same form as the ordinance here under consideration; it provides

"that no tradesmen or other persons shall do or exercise any worldly labor, business or work of their ordinary calling on the Lord's Day."

The language of the ordinance in the present case is

"that no dancing, playing at nine-pins, etc. * * * shall be done, * * * on the Christian Sabbath."

It will be noted that in construing this act the Court considered that it meant that the offense consisted in "exercising his ordinary trade upon the Lord's Day," and that it was but one entire offense, whether longer or shorter in point of duration or whether it consisted of one or of a number of particular acts.

The example cited by Justice Garrison in his opinion, that the case in question

"is as if a man should keep open two saloons for Sunday selling, for which of course there could be two convictions," p. III, l. 27,

is not apt. In the present case, all of the amusements were on one amusement pier, under the one roof, admission to which was gained through one entrance, for which an admission fee was charged; no one being permitted to use any of the amusement devices unless they had paid the initial entrance fee; only one license was paid to the city, that being the pier license. It is unreasonable to say that it is a similar case to a man operating two saloons. It is more like a man who has one saloon and who sells on Sunday in that one saloon several different kinds of liquor. Then again, it is a different sort of public policy which controls. It is not the violation of the sanctity of the Sabbath by the sale of liquor that is made the offense in the case of an individual for selling liquor on Sunday but it is the offense of selling intoxicating liquors on Sunday that is the gist of the offense. The prohibition against selling liquor on Sunday is a regulation which the legislature exercises over the liquor traffic, and thus it differs from the control which the legislature exercises over the operation of amusements and business on Sunday. In the case of the sale of liquor on Sunday the legislature is regulating the liquor traffic. In the case of the operation of amusements on Sunday, it is regulating the observance and sanctity of that day.

II

There could be but one conviction of the appellant for the reason that his offense consisted in his acting as manager of the Steeple Chase Pier.

The ordinance provides, page 26, line 21 :

“It shall be unlawful for any person or persons to aid or assist as employee, clerk or otherwise, in the performing, using, carrying on or conducting any of the above business or games.”

The testimony shows that the appellant was the manager of the Steeplechase Pier (p. 98, l. 31), and that all of the devices in question were operated on the pier. His offense consisted, in view of the ordinance, in acting as manager of the pier upon the Sunday on which these amusements were operated. It can make no difference whether in his employment as manager of the pier one or all of the amusements were operated. His offense under the ordinance, is a single offense; namely, that of acting as manager or an employee, or assisting in operating the devices in question.

III

The ordinance is invalid because it exempts from its operation moving picture shows and musical concerts, whereas the State Law prohibits these amusements as well as the amusements prohibited by the ordinance.

The first section of the Vice and Immorality Act, 4 Comp. Stat., p. 5712, provides, *inter alia*, that:

“No interludes or plays, dancing, singing, fiddling, or other music for the sake of merriment, nor any other kind of playing, sports, pastimes or diversions shall be done, performed, used or practiced by any person or persons within this State on the

Christian Sabbath, the first day of the week, commonly called Sunday.”

It has been held that this Act prohibits the exhibition of moving picture shows.

Singer vs. Criminal Court of Newark,
79 N. J. L., 386.

The Act by its terms prohibits musical productions.

The ordinance complained of appears at page 26. It is, as will be seen, an amendment to an ordinance, the earliest one of which appears to have been an ordinance passed in 1901, page 21. The penalty clause in the Ordinance of 1901 was amended in 1909, page 24, and the first section of the ordinance was amended by the ordinance approved May 14, 1915, page 26.

This amendment provides that:

“No dancing, playing at nine-pine, ten-pins, bowls, or any flip-flop, loop-the-loop, old mill, shooting gallery, carousals, knock-down-the-baby games, or any other games or amusements, or any theatrical performance, except only musical concerts and moving picture shows, shall be done, performed, used, practiced or carried on or conducted by any person or persons in any place of public entertainment, or upon the beach or public streets or parks or other public places within the limits of Atlantic City, on the Christian Sabbath or the first day of the week commonly called Sunday.”

It will thus be seen that the City of Atlantic City, by the ordinance in question, permits musical shows and moving picture shows to be conducted or exhibited, while it prohibits by the im-

position of large fines the exhibition and carrying on of other forms of amusement. The very fact that these amusements are all of one class and are amusements prohibited by the statute is evidenced by the fact that the City of Atlantic City thought it necessary, in order to make it plain that these amusements were not included, to specifically mention them as not being subject to the ordinance.

We submit that this exemption is contrary both to the Constitution of the State of New Jersey and to the Constitution of the United States, whether it be termed an exercise of the police power or not. The Legislature of the State of New Jersey could certainly not enact a statute permitting moving picture shows and musical concerts to be performed on Sunday and prohibiting theatrical entertainments and other forms of amusement from being performed on Sunday; much less could it in the one breath, say that the performance of all of these amusements was contrary to public morals and public policy and impose a different fine and different penalty.

The only section of the Charter of Atlantic City which might be said to empower the city to deal with such matters is Section 14 of the Act of 1902, (the Charter Act of Atlantic City, 1 Comp. Stat., 1130), the second sub-division of which provides that counsel shall have power:

“To prevent vice, drunkenness and immorality; to preserve public peace and good order; to prevent and quell riots, disturbances and disorderly assemblages.”

Assuming, but not admitting, that this general power is sufficient to justify the enactment of some general ordinance touching and concerning the regulation of amusements on Sunday, it certainly

does not give any discretionary power to the City Government. The State has, by its Vice and Immorality Act, declared that certain things are violations of that Act. If this be true, then the City Government has no right to eliminate from the prohibition of its ordinance those things which the State has declared to be vicious and immoral.

In the case of *Singer vs. Criminal Court of the City of Newark*, 79 N. J. L., 386, a defendant was convicted of a violation of a city ordinance of Newark in conducting a moving picture show on Sunday without a license. The Supreme Court held that the conviction was illegal.

Justice Parker, in writing the opinion of the Court said, page 387:

“The prosecutor attacks the conviction on several grounds but we think the case is sufficiently disposed of on the broad ground that as the 26th day of September was a Sunday, a fact of which we take judicial notice, and as the Act for suppressing vice and immorality (Gen. stat., p. 3707, Sec. 1), forbids all worldly employment or business * * * interludes or plays * * * sports, pastimes or diversions * * * on Sunday, under certain penalties therein prescribed, it was incompetent for the City of Newark to legalize the acts in question on a Sunday under the guise of a licensed occupation; and hence there could be no right to impose any penalty other than that provided in the statute for the acts complained of. The necessary effect of enforcing the collection of license fees by a prosecution under the ordinance for producing a Sunday show without obtaining a license there-

for and paying the fee, would be to legalize under color of a municipal ordinance an act which is expressly forbidden by general statute."

The present case we deem analogous to the *Singer* case. The effect of the ordinance in question is to legalize, so far as the City of Atlantic City is concerned, the operation of certain moving picture shows. It is no argument against this proposition to say that these shows are already prohibited by the Vice and Immorality Act. The same thing could have been said in the *Singer* case. It will be observed that in the *Singer* case, the city did not attempt to permit the moving picture show to be operated on Sunday, either with or without a license. The ordinance under discussion in that case provided that no one should operate a moving picture show without a license. The charge was that Singer operated this moving picture show without a license, and on a Sunday. The Court ruled, however, that the effect of the whole situation was to have permitted Singer to have operated his moving picture show on a Sunday if he had a license, and that such an ordinance was illegal.

We think the present case much the stronger because here there was an absolute indication on the part of City Council that it was going to permit these moving picture and musical shows to be operated on Sunday, independent of the Vice and Immorality Act, and if the Vice and Immorality Act was not a sufficient prohibition in the *Singer* case, where the ordinance did not profess to give to the licensee a right to operate on Sunday, much less can it be said to be operative in the present case, where the city ordinance does profess to give such right.

Justice Garrison, in his opinion concerning this phase of the case, held that if the amendment of May 14, 1915, page 26, is invalid, the section therefore in force was automatically revived.

It is respectfully submitted that this cannot cure the defect in the present proceedings because the complaint was drawn in each case under the amendment in question (p. 20, l. 31; p. 33, l. 34; p. 39, l. 34; p. 45, l. 34; p. 51, l. 34). In addition to that, the conviction in each case shows that the appellant was convicted of a violation of the ordinance as amended May 14, 1915 (p. 18, l. 19; p. 31, l. 18; p. 37, l. 19; p. 43, l. 18; p. 49, l. 18).

Therefore there was no conviction or any complaint made under the ordinance as it existed before the amendment was made.

IV

The City has no right to legislate with respect to the operation of amusements on Sunday so as to increase the penalty increased by the statute.

The statute provided a penalty of one dollar; the ordinance provides a penalty of two hundred dollars.

We submit that there is nothing in the charter of the City of Atlantic City in which it could be inferred that City Council had power to increase or change the penalty provided by the statute.

The legislature has given to the City of Atlantic City the power to pass ordinances to prevent vice, drunkenness and immorality; to preserve public peace and good order; to prevent and quell riots, disturbances and disorderly assemblages (1 Comp. Stat., 1130, Sec. 14, Par. 3). The State

has already declared in the Vice and Immorality Act that certain amusements shall be conducted on Sunday, and has prescribed a penalty if any one should violate that statute. The statute in question is entitled, "An Act for Suppressing Vice and Immorality." The ordinance is entitled, "An ordinance for the Suppressing of Vice and Immorality."

The activities prohibited by the statute may be roughly divided into two classes: that of amusements, and that of worldly employment. The legislature by the statute has enacted fully and completely with respect to the thing to be prohibited and to the punishment to be inflicted for a violation, nor has the legislature in the charter granted to the City of Atlantic City given to Atlantic City the right to change or modify in any way the statute. The power to suppress vice and immorality must be subordinate to the power which the State has retained to itself in its statute. To hold otherwise would be to permit double penalties to be imposed in one community, whereas only the penalty of the statute would prevail in another community; to permit larger penalties to be imposed in one community than in another, and indeed, as in the present case, to permit people in the same community to be treated differently from other persons doing the same sort of thing.

In the case of *Miller vs. Camden*, 63 N. J. L., 501, it appeared that the charter of the City of Camden conferred upon its Common Council power to pass ordinances regulating the sale of intoxicating liquor, and punishing infractions thereof by the imposition of a fine not exceeding \$100, or of a term of imprisonment not exceeding ten days. By subsequent legislation the regulation of the liquor traffic in that city was trans-

ferred to an excise board, and power given to it "to prescribe and enforce penalties, either by fine or imprisonment for the violation of excise ordinances." HELD, that the fine or imprisonment so prescribed could not legally exceed the maximum penalty fixed by the charter.

Chief Justice Gummere writing on this case said, page 504:

"When the legislature transferred the regulation of the liquor traffic from the Common Council of Camden to an excise board, it conferred upon the latter the power 'to prescribe and enforce penalties, either by fine or imprisonment, for the violence of excise ordinances'; but it was not intended, by this statutory provision, to clothe the board with power to impose fines unlimited in amount, or terms of imprisonment unlimited in extent. The legislature had, in granting its charter to Camden, already declared what should be the maximum penalty for the violation of its municipal ordinances, and that maximum remained unchanged by the transfer from the City Council to the excise board of the power to pass ordinances regulating the sale of liquor, and to punish violations of such ordinances. The prescription by the excise board of a penalty of three months' imprisonment, for the violation of the provisions of its ordinance, is *ultra vires* and void."

In the present case the legislature has fixed a penalty for the violation of the Sunday laws covering all the amusements attempted to be covered by the ordinance.

We submit that following the *Miller* case the City Council or City Commission could not impose a greater penalty than that provided by the statute, nor could it permit certain amusements such as moving pictures and musical concerts to be carried on by excusing them from the heavy penalty provided for in the case of certain other amusements.

It will be observed that the 15th section of the City Charter, 1 Comp. Stat., 1135, after enumerating particularly the powers of City Council, provides that:

“The City Council shall have power to make and establish such other ordinances, rules, regulations and by-laws, *not contrary to the laws of this State or the United States*, as they may deem necessary to carry into effect the powers and duties conferred or imposed on them.”

We submit that this provision of the charter limits Atlantic City, when it attempts to legislate within the domain of statutory legislation, that such local legislation shall not be contrary to the State legislation.

Wyse vs. Jersey City, 68 N. J. L., 127-129.

Ordinances of cities inconsistent with general laws imposed by the legislature must be held of no effect unless authorized by an expressed legislative grant.

Dillon on Mun. Ord. (5th Ed.), p. 601.
McQuillan on Mun. Corp., Sec. 16.

We submit that the judgment of the Supreme Court should be reversed.

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