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Affidavit of Petition
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Depositions

Depositions
George Auld
Direct
Cross
William J. Duff

William A. K...
Direct
Cross
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Direct

Cross

New Jersey Court of Errors & Appeals

62
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Wilhelmina Koettegen,
Prosecutor,

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vs.

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The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

William J. Duffy,
Prosecutor,

10

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

Charles Kruchen Company,
a corporation,

20

Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

Riverside Turn Verein Har-
monie, a corporation,

30

Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

21:001 9 11-17-16 b

Stipulation.

Stipulation.

It is hereby stipulated and agreed that the State of Case in the above entitled cause shall be the same in all respects as the State of Case in the Supreme Court with the addition of the opinion of the Supreme Court, and the reasons served upon counsel for the defendant as the grounds for the reversal of said judgment of the Supreme Court.

10 Dated October 2nd, 1916.

WARD & MCGINNIS,
Attorneys of Prosecutors.
FRANCIS SCOTT,
Attorney of Defendants.

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Opinion.

NEW JERSEY SUPREME COURT.

February Term, 1916.

Wilhelmina Koettegen,

vs.

City of Paterson.

On Certiorari.

10

Opinion.

Argued February 16, 1916.

Decided June 8, 1916.

Before Justices Garrison, Trenchard and Black.

For the Prosecutor, Ward & McGinnis, Esqs.

For the Defendant, Edward F. Merrey, Esq.

20

Per curiam:

This writ brings up for review an ordinance passed by the Paterson Board of Aldermen to license and regulate the public dance halls of that city.

Our examination leads to the following conclusions.

1. The authority to pass the ordinance in question is conferred upon the Board of Aldermen by the provisions of the City Charter. If the authority thus conferred is in one or more respects curtailed or superseded by the Act of 1913, still the ordinance as a whole can not be set aside in this proceeding in which no conviction has been had.

30

2. The fee fixed by the ordinance is not excessive or unreasonable in view of the incidental ex-

Opinion.

penses connected with its enforcement, including cost of constant inspection. The fee thus fixed is therefore incident to regulation and not for revenue.

3. The penalty imposed by the ordinance is authorized by the charter; in the absence of a conviction and the imposition of any penalty it is not perceived that the prosecutor is in a position to quarrel with a provision which, if her contention be correct, would not be enforceable in case she violated the ordinance. If separable the whole ordinance will not be set aside.

Shill Rolling Chair Co. v Atlantic City, 87 N. J. L. p. 399.

4. The ordinance is not an illegal delegation of the charter powers to the mayor. The charter does not require the Board of Aldermen to license places of amusement; it authorizes them to pass ordinances regulating such places. That they have done, and a part of the regulation thus ordained is a license to be obtained in the manner prescribed by the ordinance. The board has not delegated its authority, it has exercised it; the prosecutor has not been refused a license or been convicted for not having one; hence, she has not shown that any injury has come to her from this incident of regulation.

5. The ordinance is not unreasonable because of its incidental effect upon the business in which the prosecutor is lawfully engaged, hence the fact that the sale of liquors and the receipts of rent for the dance hall fell off after the ordinance went into effect does not render it confiscatory in any legal sense.

The defendant in certiorari contends *in limine* that, inasmuch as there has been no conviction, the ordinance can not be set aside *in toto* if any

Opinion.

of its provisions are at once lawful and separable from those that are challenged.

Citing,

Rosencrans v. Eatontown, 80 N. J. L., p. 227.

Newman v. Hoboken, 82 N. J. L., p. 275.

Siciliano v. Neptune Township, 83 N. J. L., p. 158.

There are in the ordinance such provisions, e. g., the sale of intoxicating liquors, the inspection of dance halls and the revocation of licenses.

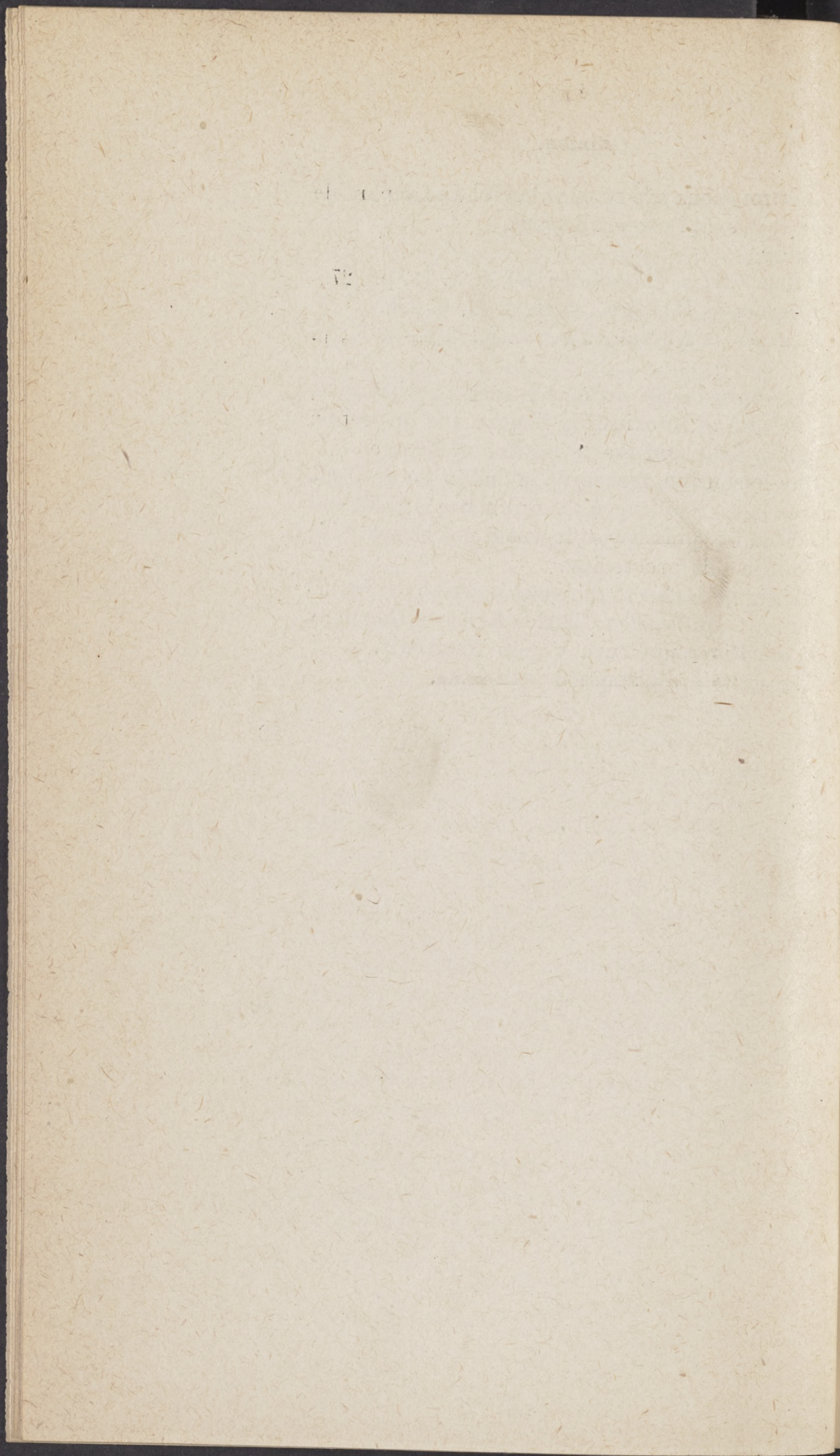
Our conclusion, therefore, is that in the respects in which it is challenged the ordinance is valid and that if it were otherwise it would not be set aside *in toto* in this proceeding. 10

This applies also to the cases in which the prosecutors are Duffy, The Charles Kruchen Company and the Riverside Turn Verein Harmonie.

The writs are dismissed with costs.

20

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NEW JERSEY SUPREME COURT

Wilhemenia Koettegen,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

On Certiorari.

William J. Duffy,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants

10

Charles Kruchen Company,
a corporation,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

20

The Riverside Turn Verein
Harmonie, a corp.,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

30

*Stipulation.***Stipulation.**

It is hereby stipulated and agreed that the depositions taken in the above cases, together with the affidavits, writs and returns shall be printed in one State of Case; that the argument in said cases is to be contained in one brief, and that each prosecutor may use the depositions taken in the remaining cases, in support of his own case.

It is also stipulated and agreed that the Writ of Certiorari and the return in only one case need be set forth at length, and that with reference to the other writs and returns, there shall be merely a statement that the writs and returns in all cases are alike.

Dated November 16, 1915.

WARD & MCGINNIS,
Attorneys of Prosecutors.

EDWARD F. MERREY,
Attorney of Defendants.

20

30

Return to Writ.

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 ance passed by the Mayor and Aldermen of the City of Paterson on the first day of March, 1915, with the records of the meetings of the said board, at which said ordinance was introduced and passed, together with all things touching and concerning the passing, approving and enacting the said ordinance, as fully and entirely before you they remain, to our Justices of the Supreme Court of Judicature, at Trenton, on the 13th of August next, you certify and send, together with this writ, that therein may be done, what of right and according to the laws of this State should be done.

Witness, William S. Gummere, Chief Justice of our New Jersey Supreme Court, at Trenton, this 24th day of July, A. D., 1915.

WARD & MCGINNIS,
Attorneys.

20
 WILLIAM C. GEBHARDT,
Clerk.

RETURN TO WRIT.

30
 I, T. Simpson Standeven, City Clerk of the City of Paterson and Chief Clerk of the Board of Aldermen of the said city, do hereby certify on behalf of the City of Paterson, as it is within commanded, an ordinance of the Board of Aldermen of the City of Paterson, passed March 1, 1915, entitled, "An ordinance, to regulate dance halls buildings, and places used for dancing and fixing the license fee therefor" with the records of the meeting of the said Board of Aldermen at which said ordinance was introduced and passed, together with all things touching and concerning the passing, approving and enacting the said ordinance, as fully and entirely as they remain in the custody of the City of Paterson.

Board of Aldermen Proceedings.

Ayes:—Aldermen Brennan, Close, Ghesquier, Hayden, Kane and Koehler, (6).

Noes:—Aldermen Bush, Kearney, King, Patmos and Smith, (5).

President Smith declared the amendment carried and the ordinance referred to the ordinance committee.

10 PROCEEDINGS OF THE BOARD OF
ALDERMEN.

Regular meeting. March 1st, 1915.

REPORTS OF STANDING COMMITTEES.

The Committee on Ordinances submitted the following report for the Board's consideration:
To the Honorable, The Board of Aldermen,
Gentlemen:—

20 Your Committee on Ordinances report having considered the "Ordinance to regulate dance halls" and respectfully recommend the adoption of the same with the amendments suggested herewith.

On introductory line, strike out the words "Mayor and."

Section 1. Strike out the letter "s" on "halls."

Section 1, line 8. Insert the word "intoxicating" between the words, "sell" and "liquors."

30 Section 3, line 25. Strike out the words "six months" and insert the words "one year."

Section 3, line 4. Strike out the word "twenty" and insert the word "forty."

Section 4, line one, between the words "no liquors" insert the word "intoxicating."

Section 5, line 11. Strike out the word "license" and insert the word "person."

Board of Aldermen Proceedings.

Section 6, line 9. Strike out the word "own" and insert the words "or her."

(Signed) WALLACE R. KING,
JACOB PATMOS,
N. F. KEARNEY.

Attest: CHARLES S. GALL, *Clerk.*

Alderman King's motion that the report be received, ordered placed on file and the amendments recommended incorporated in the ordinance now before the Board, to be taken up on second reading, was seconded by Alderman Kearney. 10

The motion was regularly put by President Smith and a roll call vote polled, resulting as follows:

Ayes:—Aldermen Brennan, Bush, Close, Kearney, King, Patmos and Smith (7).

Noes:—Aldermen Ghesquier, Hayden, Kane and Koehler (4). 20

President Smith declared the motion carried, the report of the committee received and its recommendations adopted.

PROCEEDINGS OF THE BOARD OF
ALDERMEN.

Regular meeting. March 1st, 1915.

UNFINISHED BUSINESS.

The ordinance entitled, "An Ordinance to regulate dance halls, buildings and places used for dancing and fixing the license fee therefor," as amended, was taken up at this time and placed on second reading. 30

Alderman Hayden moved that it be laid over until all business of the Board had been transacted.

This motion was adopted.

*Board of Aldermen Proceedings.*PROCEEDINGS OF THE BOARD OF
ALDERMEN.

Regular meeting.

March 1st, 1915.

NEW BUSINESS.

There being no further business, the ordinance entitled, "An Ordinance to regulate dance halls, buildings and places used for dancing and fixing the license fee therefor," (as amended by the
 10 committee on ordinances, to which committee it was referred at the last regular meeting of the Board for investigation and amendment, said committee's report having been received and all amendments recommended being concurred in by the Board when the said report was taken under the order of "Reports of Standing Committees" taken up under the order of "Unfinished Business" and laid over until all regular business had
 20 been transacted, was taken up at this time and placed on second reading.

Alderman King moved that the ordinance, as amended, be read for a second time. Alderman Kearney seconded the motion.

The motion was regularly put and adopted.

The ordinance was then read, as amended, for the second time.

Alderman King moved that before the ordinance be considered further an opportunity be given to any one who desired to speak for or against the adoption of it.
 30

Alderman Bush seconded the motion.

Alderman Hayden amended the motion to the effect that the Board proceed with a vote.

Alderman Kane seconded the amendment.

The amendment was regularly put and lost, the members voting as follows:

Board of Aldermen Proceedings.

Ayes:—Aldermen Ghesquier, Hayden, Kane and Koehler, (4).

Noes:—Aldermen Brennan, Bush, Close, Kearney, King, Patmos and Smith, (7).

Alderman King's motion was then put and adopted.

President Smith requested any one who desired to speak for or against the ordinance to kindly do so at this time.

Rev. D. S. Hamilton, pastor of St. Paul's Church; Rev. Father A. Stein, pastor of Our Lady of Lourdes Church; Mrs. William S. Carr, representing the Woman's Club; Mr. James Higgins, president of the Federation of Holy Name Societies of Passaic County, spoke in favor and urged the passage of the ordinance. 10

No one appeared and spoke against the passage of the ordinance.

Alderman King moved that the ordinance be passed to a third reading. Alderman Kearney seconded the motion. 20

The motion was regularly put and a roll call vote polled, resulting as follows:

Ayes:—Aldermen Brennan, Bush, Close, Ghesquier, Kearney, King, Koehler, Patmos and Smith, (9).

Noes:—Aldermen Hayden and Kane, (2).

President Smith declared the motion carried and the seventh ordinance passed to a third reading. 30

Alderman King moved that the ordinance be read for a third time. This motion was adopted.

The ordinance was then read by title for a third time.

Alderman King moved that the ordinance be now finally passed and adopted by the Board. Al-

Board of Aldermen Proceedings.

derman Kearney seconded the motion. The motion was regularly put and a roll call vote polled, resulting as follows:

Ayes:—Aldermen Brennan, Bush, Kearney, King, Patmos and Smith, (6).

Noes:—Aldermen Close, Ghesquier, Hayden, Kane and Koehler, (5).

10 President Smith declared the motion carried, the ordinance finally passed and adopted by the Board and directed the clerk to present it to the Mayor for his approval, and, if approved, to have it advertised in accordance with law.

The following is a copy of the ordinance as originally introduced.

An Ordinance to Regulate Dance Halls, Buildings and Places Used for Dancing, and Fixing the License Fee Therefor.

20 Be it ordained by the Mayor and Board of Aldermen of the City of Paterson:

Section 1. The words "public dance halls" when used in this ordinance shall be taken to mean any room, place or space in the City of Paterson, in which dancing is carried on and to which admission can be had by payments of a fee, or by the purchase, possession or presentation of a ticket or token, or in which a charge is made for caring for clothing or other property, or

30 Any room, place or space in the City of Paterson located upon the premises which are licensed to sell liquors in which dancing is carried on and to which the public may gain admission, either with or without payment of fee,

The word "dancing" as used in this and succeeding sections shall not apply to exhibitions or performances in which the persons paying for admission do not participate.

Board of Aldermen Proceedings.

Section 2. No public dance hall shall be conducted nor shall dancing be taught or permitted in any public dance hall unless it shall be licensed pursuant to this ordinance and the license be in force and not suspended.

Section 3. The application for such licenses shall be made in writing to the Register of Licenses, designating the location of such dance and the person or persons intending to conduct the same, accompanied with a fee of twenty dollars; whereupon a license shall be prepared and presented to the Mayor, who, at his discretion, may grant or refuse the same. No license shall become effective, until it has received the approval of the Mayor, and in case he shall refuse to approve such license the money so paid to the Register of Licenses shall be returned to the applicant or his attorney properly authorized to receive the same. 10

No license shall be issued, or renewed, unless the place designated in such application complies with all laws, ordinances, rules and the provisions of any building, fire or health code applicable thereto, and is a safe and proper place for the purpose for which it shall be used, properly ventilated and supplied with sufficient toilet conveniences; nor until the Mayor shall have received a written report of an inspector of his appointment to that effect. Such inspectors shall be permitted to have access to all public dance halls at all reasonable times, and whenever they are open for dancing, instruction in dancing or for any other purpose. Inspectors shall be required to regularly report all violations of law or of the ordinances of the city. All reports shall be in writing, and shall be filed with the Register of Licenses and made public records. 20 30

Board of Aldermen Proceedings.

Every such license shall be of force for six months from the date of its issue and no longer. Such license shall be posted at the main entrance of such dance. Dancing in such licensed place shall not be permitted between one and seven o'clock A. M. Such licensed place must provide, throughout the whole period of the dancing, an adequate supply of pure cold water in an accessible place.

10 Section 4. No liquors shall be sold, served or given away in any public dance hall, as heretofore defined, or in which dancing is advertised to be taught, or in which classes in dancing are advertised to be maintained, or in which instruction in dancing is given for hire; or any room connecting with such hall.

20 Section 5. The license aforesaid may be forfeited for disorderly or immoral conduct permitted on the licensed premises, or on conviction of any person for violation of Section 4 of this ordinance, or of any statute or of any common law offence. Such license may be suspended or revoked by the Mayor for such violations or whenever the licensed premises do not comply with Section 3 of this ordinance, provided that the licensee or person in charge shall be served with copy of the report or complaint. In any case
30 where a license is revoked, or where the Mayor refused to renew a license, reasons for action must be stated in writing and shall be public records. Any licensee who shall violate, neglect or refuse to comply with any of the provisions of this ordinance shall also be liable to fine of twenty-five dollars.

It shall be lawful for any person to make complaint of such violations, as aforesaid, before the

Board of Aldermen Proceedings.

Recorder of said city, who shall be and is hereby authorized to hear and determine such complaints and enforce the penalties herein before mentioned.

Section 6. The Mayor may appoint two inspectors, one of whom shall be a woman, to carry out the provisions of this ordinance; they shall be resident citizens of the city, and their term of office shall be for one year from date of appointment, unless sooner terminated as herein provided. Any such inspector or official may be removed from office by the said Mayor at any time during said term for cause shown to the satisfaction of said Mayor, and after having been afforded a hearing in his own behalf. 10

Section 7. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

Section 8. This ordinance shall take effect May 1, 1915. 20

The following are copies of the ordinance as finally passed and approved by the Mayor, with Proofs of publication in Paterson Press on 3rd and 4th days of March, 1915, and also Paterson Call as follows:

An Ordinance to Regulate Dance Halls, Buildings and Places Used for Dancing and Fixing the License Fee Therefor.

Be it ordained by the Board of Aldermen of the City of Paterson: 30

Section 1. The words "public dance hall," when used in this ordinance, shall be taken to mean any room, place or space in the City of Paterson in which dancing is carried on and to which admission can be had by payment of a fee, or by the purchase, possession or presentation of a tick-

Board of Aldermen Proceedings.

et or token, or in which a charge is made for caring for clothing of other property, or

Any room, place or space in the City of Paterson located upon the premises which are licensed to sell intoxicating liquors in which dancing is carried on and to which the public may gain admission, either with or without the payment of fee.

10 The word "dancing" as used in this and succeeding sections shall not apply to exhibitions or performances in which the persons paying for admission do not participate.

Section 2. No public dance hall shall be conducted nor shall dancing be taught or permitted in any public dance hall unless it shall be licensed pursuant to this ordinance and the license be in force and not suspended.

20 Section 3. The application for such licenses shall be made in writing to the registrar of licenses, designating the location of such dance hall and the person or persons intending to conduct the same, accompanied with a fee of forty dollars; whereupon a license shall be prepared and presented to the Mayor, who, at his discretion, may grant or refuse the same. No license shall become effective until it has received the approval of the Mayor, and in case he shall refuse to approve such license, the money so paid to the registrar of licenses shall be returned to the applicant or his
30 attorney properly authorized to receive the same.

No license shall be issued, or renewed, unless the place designated in such application complies with all laws, ordinances, rules and the provisions of any building, fire or health code applicable thereto, and is a safe and proper place for the purpose for which it shall be used, properly ventilated and supplied with sufficient toilet conveniences; nor

Board of Aldermen Proceedings.

until the Mayor shall have received a written report of an inspector of his appointment to that effect. Such inspectors shall be permitted to have access to all public dance halls at all reasonable times, and whenever they are open for dancing, instructions in dancing or for any other purposes. Inspectors shall be required to regularly report all violations of law or of the ordinances of the city. All reports shall be in writing, and shall be filed with the registrar of licenses and made public records. 10

Every such license shall be of force for one year from the date of its issue and no longer. Such license shall be posted at the main entrance of such dance. Dancing in such licensed place shall not be permitted between one and seven o'clock A. M. Such licensed place must provide, throughout the whole period of the dancing, an adequate supply of pure cold water in an accessible place. 20

Section 4. No intoxicating liquor shall be sold, served or given away in any public dance hall, as heretofore defined, or in which dancing is advertised to be taught, or in which classes in dancing are advertised to be maintained, or in which instruction in dancing is given for hire; or any room connecting with such hall.

Section 5. The license aforesaid may be forfeited for disorderly or immoral conduct permitted on the licensed premises, or on conviction of any person for violation of Section 4 of this ordinance, or of any statute or of any common law offense. Such license may be suspended or revoked by the Mayor for such violations or whenever the licensed premises do not comply with Section 3 of this ordinance, provided that the licensee or per- 30

Board of Aldermen Proceedings.

son in charge shall be served with a copy of the report or complaint. In any case where a license is revoked, or where the Mayor refused to renew a license, reasons for action must be stated in writing and shall be public records. Any person who shall violate, neglect or refuse to comply with any of the provisions of this ordinance shall also be liable to fine of twenty-five dollars.

10 It shall be lawful for any person to make complaint of such violations, as aforesaid, before the recorder of said city, who shall be and is hereby authorized to hear and determine such complaints and enforce the penalties herein before mentioned.

20 Section 6. The Mayor may appoint two inspectors, one of whom shall be a woman, to carry out the provisions of this ordinance; they shall be resident citizens of the city and their term of office shall be for one year from date of appointment, unless sooner terminated as herein provided. Any such inspector or official may be removed from office by the said Mayor at any time during said term for cause shown to the satisfaction of said Mayor, and after having been afforded a hearing in his or her behalf.

Section 7. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

30 Section 8. This ordinance shall take effect May 1, 1915.

Passed, March 1, 1915.

WILLIAM SMITH,
President, Board of Aldermen.

Approved March 2, 1915.

ROBERT H. FORDYCE,
Mayor.

Above ordinance was also published in Paterson Press March 3 and 4, 1915

Affidavit of Publication.

Attest: T. SIMPSON STANDEVEN,
City Clerk.

Fees, \$24.66. mar. 3-4

State of New Jersey,
 Passaic County, ss.:

T. W. Hendershot, of full age, being duly sworn,
 on his oath saith that he is the bookkeeper of The
 Call Printing and Publishing Company, and that
 the annexed notice was published on March 3rd
 and 4th, 1915, in The Morning Call, a newspaper
 printed and published at Paterson, in this State. 10

T. W. HENDERSHOT,
 Sworn and subscribed before me this
 fourth day of March, 1915.

GARRETT H. STURR,
Notary Public of New Jersey.

20

30

NEW JERSEY SUPREME COURT.

Wilhemenia Koettegen,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

10

Charles Kruchen Company,
a corporation,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

On Certiorari.

20

William J. Duffy,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

30

Riverside Turn Verein-Har-
monie, a corporation,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

Depositions on the part of the prosecutors in
the above stated cases taken, pursuant to rule and

On Certiorari.

notice before Edward O'Byrne, Supreme Court Examiner, this eighteenth day of October, 1915, at ten thirty o'clock in the forenoon at the office of City Counsel in the City Hall, at Paterson, New Jersey.

EDWARD O'BYRNE,
Supreme Court Examiner.

APPEARANCES.

10

Peter J. McGinnis, Esq., of Messrs Ward & McGinnis, for the Prosecutors.

Edward F. Merrey, Esq., City Counsel, for the Defendants.

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Depositions.

NEW JERSEY SUPREME COURT.

Riverside Turn-Verein Har- monie, a corporation, <i>Prosecutor,</i>	}	<i>On Certiorari.</i>
vs.		
The Mayor and Aldermen of the City of Paterson, and T. 10 Simpson Standeven, <i>Defendants.</i>		

Depositions.

Depositions on the part of the prosecutor in the above stated cause, taken pursuant to rule and notice, on this fifteenth day of October, A. D., 1915, at the City Hall, in the City of Paterson, New Jersey, before me, Edward O'Byrne, Supreme Court Examiner, in the presence of Hon. Peter J. McGinnis, (Ward and McGinnis) for the prosecutor, and Edward F. Merrey, Esq., City Counsel, for the defendant.

EDWARD O'BYRNE,

Supreme Court Examiner.

It is stipulated between the respective attorneys that the depositions shall be taken down in shorthand notes by the examiner, the signatures of the witnesses being waived, and that the transcript of the shorthand notes, made by the examiner, shall have the same force and effect as if the depositions were taken down in long hand by the examiner and signed by the witnesses.

Edward Durst.

EDWARD DURST, sworn as a witness on the part of the prosecutor, testifies as follows:

Direct Examination by Mr. McGinnis.

Q. You are a resident of this city? A. I am.

Q. I believe you hold the position of financial secretary of the Riverside Turn-Verein Harmonie? A. Yes, sir.

Q. It is a corporation, I believe, of the State of New Jersey? A. Yes. 10

Mr. Merrey.—We will admit that.

The Turn-Verein, the prosecutor in this cause, owns a piece of property known as 735 to 743 River street, in the City of Paterson, New Jersey? A. Yes; they do.

Q. And they have a building there called the Riverside Turn Hall? A. Yes, sir. 20

Q. Will you describe that building? A. The building is on two lots; there is a hall; in front of the hall is a saloon, and upstairs over the saloon is the janitor's rooms, and back of the hall is another cafe room, a sort of a refreshment room.

Q. So that you have a hall, with a saloon in front of it, and a refreshment room in the rear of it; is that right? A. Yes.

Q. Both the refreshment room and the saloon open directly on the hall, do they? A. On the hall; yes, sir. 30

Q. Who runs the place? A. Why, the society.

Q. The society itself conducts the whole affair? A. Yes.

Q. That building is in what is known as the Riverside section of the City of Paterson? A. Yes.

Edward Durst—direct.

Q. There is a very large German population living in that section of the city, is there not?

A. There is a very large German population; yes

Q. Your society is composed of Germans? A. Composed of Germans mostly.

Q. Is the hall used for dancing purposes? A. Mostly for dances.

Q. It is rented for that purpose, is it? A. Yes.

10 Q. What is the rental that you get for each dance? A. \$35; that is, they get the bar-room for that.

Q. And the people that hold these dances in that hall, to a considerable extent, are of a foreign nationality? A. They were before our new dance hall, but since then it is mostly the younger clubs of that section.

20 Q. Under this dance hall ordinance you would have to shut off your saloon part and this room in the rear of the hall also; is that right? A. Yes.

Q. If you did that could you rent that hall out to any extent? A. No; not at all.

Q. Would that cause any loss of revenue to the society? A. It certainly would. Outside of the membership that is the only income the society has, besides the saloon, and that only carries expenses, and not even that; it would ruin the place altogether.

30 Q. The saloon about carries expenses, and the use of the hall helps— A. (Interrupting) It helps the place out.

Q. How much money has your society invested there for the land and building? A. I guess about twenty or twenty-five thousand dollars.

Q. Outside of the land? A. That is, including the land.

Edward Durst—direct.

Q. Altogether about \$25,000? A. Yes; I think that is it. The building itself, I think, about twelve thousand dollars, and the property about eighteen or twenty thousand dollars; something like that.

Q. That would be \$32,000? A. Yes.

Q. Can you tell me approximately how many times in the year that place is rented? A. Before the ordinance it was rented about fifty times a year. 10

Q. After the ordinance went into effect, during the four months after it was introduced,— A. We did not have the hall rented at all.

Q. You did not have the hall rented at all? A. No.

Q. Is there a mortgage on your place? A. There is a mortgage of eight thousand dollars or nine thousand dollars.

Q. You have to pay interest on that mortgage? 20
A. Yes; at six per cent.

Q. And insurance? A. Yes.

Q. And taxes? A. Yes.

Q. And without the rent of that hall your society will lose its property; is that right? A. It would; it would sure put us to such a loss.

Q. What is your membership of the Riverside Turn-Verein Harmonie? A. About a hundred and fifty or a hundred and seventy-five members. 30

Q. What are your dues a month? A. Twenty-five cents a month, and one dollar initiation fee.

Q. When not used for dancing, your hall is used for athletic purposes? A. Yes.

Q. That is what the Turn-Verein is—an athletic club? A. Yes, sir.

Q. A German athletic society? A. Yes.

Edward Durst—cross.

Q. How long has that building been there? A. Since 1906, I think.

Q. For some time before the passage of this ordinance? A. Yes.

Q. And in your opinion you could not make any changes there so as to comply with the ordinance without destroying the rental value of the hall; is that right? A. Yes.

10 Q. The hall is practically the whole property?
A. The whole property.

Cross-Examination by Mr. Merrey.

Q. You applied for a license down there? A. No; we have not.

Q. You did not ask for a license? A. No, sir.

20 Q. Then you could not have held dances after the passage of the ordinance? A. No; we could not. We did not understand that the way the ordinance was passed—we had some information from certain parties that knew about this, and they said the changes we would have to make would be so great that we could not stand it; we could not pay the amount necessary to put the hall in order so that we could run dances.

Q. You made a statement that you had no dances in the hall after the passage of the dance hall ordinance? A. Yes.

30 Q. That was mostly in the summer time? A. Yes.

Q. You would not have had any dances there anyhow? A. Yes; we would.

Q. Many? A. Not many.

Q. The dancing season commences about October, does it not? A. Yes; it does as a rule, but there are picnics during the summer months be-

Edward Durst—cross.

cause we have a big park there, and that would stop us from renting the hall to picnics if they wanted a dance with it.

Q. There is not any way of shutting off the dance hall from the saloon part? A. Yes! there is.

Q. Without going to great expense? A. No.

Q. That is impossible? A. The expense would be too great.

Q. Is that the only reason you have, because the expense would be too great; do you think if you did that, separated the dance hall from the saloon part, you could hold dances in the hall?

A. It would not be used.

Q. The dance hall would not be used unless there was a convenient place for the dancers to obtain drinks; is that right? A. That is right; yes.

By Mr. McGinnis.

Q. The reason no application was made for a license under the new dance hall ordinance was because you knew it was impossible for you to comply with the provisions of it? A. Yes.

Q. Owing to the construction of the building? A. Yes.

Q. There has been no complaint of any sort against your place? A. There has never been a complaint; no.

Depositions on the part of the prosecutor closed.

EDWARD O'BYRNE,

Supreme Court Examiner.

Edward Durst—cross.

It is stipulated that the depositions on the part of the defendants in the above stated cause will be taken on Monday, October 18th, 1915, at half-past ten o'clock in the forenoon, at the City Hall, in the City of Paterson, N. J.

State of New Jersey, }
County of Passaic } ss.:

10 To the Honorable the Chief Justice and the Justices of the Supreme Court:

I, Edward O'Byrne, Supreme Court Examiner, do herewith certify to the Supreme Court the foregoing deposition of Edward Durst, on the part of the prosecutor in the above stated cause.

I further certify that the said witness was by me first sworn to testify to the truth, the whole truth and nothing but the truth.

20 I further certify that pursuant to stipulation between the respective attorneys the said deposition was taken by me in shorthand notes, the signature of the witness to his deposition being waived, and that the foregoing is a true and correct transcript of said shorthand notes taken by me.

Dated, Paterson, N. J., October 18th, 1915.

EDWARD O'BYRNE,

Supreme Court Examiner.

Depositions.

NEW JERSEY SUPREME COURT.

William J. Duffy,
Prosecutor.

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

*On Certiorari
Depositions*

10

Depositions taken in the above stated cause this 15th day of October 1915, at Paterson, N. J. before Edward O'Byrne, Supreme Court Examiner.

NEW JERSEY SUPREME COURT.

William J. Duffy,
Prosecutor.

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

*On Certiorari
Depositions.*

20

Depositions on the part of the prosecutor taken in the above stated cause, pursuant to rule and notice, before me, Edward O'Byrne, Supreme Court Examiner, on the fifteenth day of October, 1915, at half past ten o'clock in the forenoon, at the City Hall, in the City of Paterson, in the presence of Hon. Peter J. McGinnis (Ward and McGinnis) attorney for the prosecutor, and Edward F. Merrey, Esq., City Counsel, attorney for the City of Paterson.

EDWARD O'BYRNE,
Supreme Court Examiner

George Arold—direct.

It is stipulated between the respective attorneys that the depositions shall be taken down in shorthand notes by the examiner, the signatures of the witnesses being waived, and that the transcript of the shorthand notes, made by the examiner, shall have the same force and effect as if the depositions were taken down in long hand by the examiner and signed by the witnesses.

10

GEORGE AROLD, sworn as a witness on the part of the prosecutor, testifies as follows:

Direct Examination by Mr. McGinnis.

Q. You are a resident of this city? A. Yes.

Q. And you are the owner of a piece of property on Main street known as Arold's Hall? A. Yes, sir.

20

Q. What is the street number of that property? A. 997, 999 and 1001 Main street.

Q. Three city lots? A. Three city lots.

Q. There is a brick building on the property? A. A brick building, yes.

Q. Will you please tell us how that building is divided? A. Partly two stories.

Q. On the first floor, about two-thirds of this property is used as a hall, known as Arold's hall? A. Yes; two-thirds of it.

30

Q. And the other third is rented to Mr. Duffy? A. Yes.

Q. And used by him as a cafe? A. Yes.

Q. That is right? A. Yes.

Q. Back of Mr. Duffy's cafe there is a sort of a refreshment room that is used in connection with the cafe? A. Yes.

George Arold—direct.

Q. Between the hall and this cafe room, as I might call it, there are a couple of entrances, are there not? A. About four doors, four double doors.

Q. Is Arold's Hall used much for dancing? A. Yes; it is.

Q. And has been? A. Yes.

Q. When did you erect this building? A. About four years ago.

Q. And the present building takes the place of a building that had been destroyed by fire? A. Yes; a building that was destroyed by fire. 10

Q. Also known as Arold's Hall? A. Yes.

Q. So that it is a well established place? A. Yes.

Q. How much money is invested by you in that property? A. About \$20,000.

Q. To whom do you rent it? A. To the Paterson Brewing and Malting Company.

Q. When does the lease expire? A. It has two more years to go. 20

Q. What rent do you receive? A. About \$1,700 a year.

Q. In your opinion, would the closing of the doors between the hall proper and the room in the rear of Mr. Duffy's place diminish the rental value of that hall? A. It would, about one half, yes; from what they tell me it would not be worth any more than half to them. 30

Q. And I believe you have been notified that your lease will not be renewed beyond the present term if that dance hall ordinance remains in effect? A. Yes.

George Arold—cross.

Cross Examination by Mr. Merrey.

Q. If there is no connection between the dance hall and the cafe kept by Mr. Duffy, there is a way by which persons can go in and out through the street to the dance hall? A. Just the one entrance.

Q. To the dance hall? A. To the dance hall, yes.

10 Q. The idea is that in case the cafe is shut off, that not so many people will patronize the dance hall because they cannot get drinks? A. Well, there would be no other exit, because it is built right on the line; I would have to go on somebody else's property if I wanted to get a fire escape or exit.

20 Q. Do you mean that in case the entrance to the cafe is closed up, the patronage of the hall would drop off because people would not dance unless they could get a drink? A. Not only to drink, but to eat; they serve meals. People would not go through the saloon; the women would not go through the saloon.

Q. You mean they would have to go through the front door? A. They would have to go through the front door, and they would not do that.

Q. But they will go through a side entrance? A. Yes; they would go there.

30 Q. So that they would not have to go through the bar room? A. Yes; that is right.

Q. They won't use the hall unless they can go in somewhere to get something to drink and eat? A. No, sir; they will not.

Q. When I speak of drink I mean beer, wine, whiskey or other intoxicating liquors? A. Yes.

*George Arold—cross.**By Mr. McGinnis.*

Q. The closing up of all these doors, would that place you in a position of violating the fire ordinance? A. Yes; it would.

Q. I understand your building covers the entire property? A. The entire property, right on the line.

Q. These doors that lead to the dining room in the rear of the saloon are on the south side of the building? A. Yes. 10

Q. To create exits on the north side or through the rear of the property, you would have to open on somebody else's land; is that right? A. Yes.

Q. About how deep is your property? A. 100 feet.

Q. The hall itself, except for a little vestibule in front, takes up the entire length of the building? A. The entire length.

Q. In all other respects, it is a well lighted and sanitary place, is it not? A. Yes, sir. 20

WILLIAM J. DUFFY, the prosecutor, sworn as a witness in his own behalf, testifies as follows:

Direct Examination by Mr. McGinnis.

Q. You rent the property on upper Main street known as Arold's Hall? A. Yes. 30

Q. Do you rent the entire place? A. Yes.

Q. You have a lease for it, have you? A. Yes.

Q. When does it expire? A. A year from next May.

Q. This hall is used a great deal for dancing, I believe? A. Yes, sir.

William J. Duffy—direct.

Q. Did the dance hall ordinance, during its enforcement, make any difference in the receipts of the place? A. Well, I would have a dance on from the first Friday in September and every Friday in October, and I haven't only one Friday in October so far taken; I used to always have three Fridays in October taken and used to start Saturday dancing on the second Saturday in September.

10 Q. Well, about how much do you think approximately speaking has the business of the hall and your place fallen off? A. So much so that I told Mr. Arold that if the dance hall ordinance remains in effect, they would have to get another tenant; that I would quit and look for another place.

20 Q. As I understand it, about two-thirds of this building is occupied as a hall, and the southerly third is used by you for your saloon and also as a sort of a refreshment room? A. Drinking and dining room in the back.

Q. It opens on the hall? A. Yes.

Q. When there are dances on the dancers can pass from the dancing hall into the refreshment room or bar room? A. From the hall into the dining room.

Q. If that is closed up, the people would have to— A. (Interrupting) Go out on the street and come through the bar room.

30 Q. And would women come through that bar room? A. No; I would have to quit the place; I could not get on; I am paying \$140 a month rent this year, and next year I would be paying \$145 a month; and without the hall being the way it is now, I would not pay \$70 a month; \$70 would be a high price.

William J. Duffy—direct.

Q. So that, for instance, young men coming there with women folks, and wanting to drink, would have to leave the women folks— A. (Interrupting) They would have to go out on Main street, and then they would go somewheres else.

Cross Examination by Mr. Merrey.

Q. You took out a license for the dance hall?

A. Yes.

Q. There was no objection to giving you one? 10

A. No.

Q. It was simply required that you close the exit from the hall to the bar-room? A. Yes, until the decision, and then they returned me my money and said there was no ordinance in effect and they gave me back my money.

Q. They gave you back your money? A. Yes; they returned the money.

Q. Did you have your license? A. I made application for it. 20

Q. They told you you could have it? A. Yes.

Q. You simply were to shut up the entrance from the dance hall to the saloon? A. Yes.

Q. Your objection to the ordinance is that it cuts off the receipts of the saloon very much? A. Three-fourths.

By Mr. McGinnis.

Q. And it also cuts off the use of the hall; people would not hire the hall with the entrance cut off? A. You could use it only occasionally, maybe ten times a year, where it is used every Friday and Saturday and holiday eve and holidays. 30

Q. The City of Paterson has not given you any compensation or offered you any? A. Not yet?

William J. Duffy—cross.

Q. Or damages for loss of— A. No. The last license I took out I only ran six months on; I think there is six months coming to me, according to that.

By Mr. Merrey.

Q. You said the receipts would drop off, you meant— A. (Interrupting) It would be just a regular saloon; there would not be a hall or anything to it; it might be a twenty dollar a day place.

Q. You find that most of the patrons of the dance hall desire to have a convenient place nearby to drink? A. Yes. They want it closed. I claim it is best to have it open so that everybody can see what was going on there.

Depositions on the part of the prosecutor in the above stated cause is closed.

20 EDWARD O'BYRNE,
Supreme Court Examiner.

It is stipulated that depositions on the part of the defendants in the above stated cause will be taken on Monday, October 18th, 1915, at half-past ten o'clock in the forenoon, at the City Hall, in the City of Paterson, N. J.

30 State of New Jersey, }
County of Passaic. } ss.:

To the Honorable the Chief Justice and the Justices of the Supreme Court:

I, Edward O'Byrne, Supreme Court Examiner, do herewith certify to the Supreme Court the foregoing depositions of George Arold and William J. Duffy on the part of the prosecutors in the above stated cause.

Certificate of Certification.

I further certify that the said witnesses were by me first sworn to testify to the truth, the whole truth and nothing but the truth.

I further certify that pursuant to stipulation between the respective attorneys the said depositions were taken down by me in shorthand notes, the signatures of the witnesses to their respective depositions being waived, and that the foregoing is a true and correct transcript of said shorthand notes taken by me. 10

Dated, Paterson, N. J., October 18th, 1915.

EDWARD O'BYRNE,

Supreme Court Examiner.

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Depositions.

NEW JERSEY SUPREME COURT.

	Wilhelmina Koettegen, <i>Prosecutor,</i>	}	<i>On Certiorari,</i>
	vs.		
10	The Mayor and Aldermen of the City of Paterson, and T. Simpson Standeven, <i>Defendants.</i>		
	Charles Kruchen, Company, a Corporation, <i>Prosecutor,</i>	}	<i>On Certiorari,</i>
	vs.		
20	The Mayor and Aldermen of the City of Paterson, and T. Simpson Standeven, <i>Defendants.</i>		

Depositions.

Depositions taken on the part of the prosecutors, pursuant to rule and notice, in the above stated causes, on the fifteenth day of October, 1915, at the City Hall in the City of Paterson, before Edward O'Byrne, Supreme Court Examiner, in the presence of Hon. Peter J. McGinnis (Ward and McGinnis) for the prosecutors, and Edward F. Merrey, City Counsel for the defendants.

EDWARD O'BYRNE,

Wilhelmina Koettegen—direct.

Supreme Court Examiner.

It is stipulated between the respective attorneys that the depositions in the above stated causes shall be taken together, and the same depositions shall be used upon the argument of each of said causes.

It is further stipulated that the depositions shall be taken down in shorthand notes by the examiner, the signatures of the witnesses being waived, and that the transcript of the shorthand notes, made by the examiner, shall have the same force and effect as if the depositions were taken down in long hand by the examiner, and signed by the witnesses. 10

WILHELMINA KOETTEGEN, one of the prosecutors in the above stated causes, being duly sworn according to law as a witness on the part of the prosecutor, testifies as follows: 20

Direct Examination by Mr. McGinnis.

Q. You are the owner of the premises Nos. 54 and 56 Van Houten street, in the City of Paterson, N. J? A. Yes, sir.

Q. Is that the place called "Helvetia Hall?" A. Yes, sir.

Q. How big a plot of land have you there? A. Two lots; I guess fifty by one hundred. 30

Q. What kind of a building have you on it? A. We got a basement down stairs with two bowling alleys and pool tables downstairs in the basement, and then we got a cafe and restaurant on the first floor.

Q. What else; describe the rest of the building.

A. And the dining room, and then we have a

Wilhelmina Koettegen—direct.

dance hall and a gallery. On the top floor there is a lodge room and fourteen rooms.

Q. What are those fourteen rooms used for?

A. For bedrooms and living rooms; I have five rooms for myself.

Q. It is a brick building, I believe? A. Yes, sir.

Q. It was built for the purpose it is now being used? A. Yes; after the fire we built it new.

10 Q. How much money was invested in that property? A. I guess about fifty-thousand dollars altogether with the ground. The building cost from forty-three thousand dollars to forty-five thousand dollars—the building alone.

Q. And do you rent any part of that property to any one? A. I rent it out to lodges and furnished rooms.

20 Q. Do you rent the hall part to anyone? A. To the Charles Kruchen Company; the property is in my first husband's name, the name of Kruchen, yet.

Q. You live on the premises, do you? A. Yes, sir.

Q. How much do you rent this place for to the Charles Kruchen Company? A. For \$225 a month; I got the lease for nine years.

30 Q. What part of the building does the Kruchen Company rent? A. The basement and downstairs and the cafe and the dining room and the dancing hall.

Q. You say the cafe, too? A. Downstairs, yes, and the lodge room.

Q. How large is that dancing hall? A. The main hall is the whole lot.

Q. How large is the main hall? A. 100 feet long and I guess about 45 feet wide.

Wilhelmina Koettegen—direct.

Q. One of the largest halls in the city, is it not?
A. No; not the largest.

Q. One of the largest? A. Yes.

Q. Is it used a good deal for dances? A. Yes; for dances and fairs and weddings; we have had many fairs in the hall already.

Q. What other purposes is it used for besides dances and fairs? A. And weddings, and we have had big banquets.

Q. Mass meetings, political meetings? A. 10
Yes, sir.

Q. Before this dance ordinance went into effect, do you know whether or not the hall was used a great deal for dancing? A. Yes, sir.

Q. And after the dance hall ordinance that we are discussing went into effect, did it have any effect on the use of the hall? A. Yes; it dropped down.

Q. How much did it drop off, about. A. I guess 20
pretty near half. It was around Ferbruary, March and April, the winter season.

Q. What is your own nationality? A. German; I was born in Germany.

Q. What are the nationalities that frequen that hall for dancing and other purposes? A. German, English, American, Polish; all kinds of people.

Q. A great many foreigners or various nationalities use that hall? A. Yes; and we have 30
churches every year.

Q. Is there any way that you can comply with that dance hall ordinance and still keep your trade? A. No.

Q. You are the wife of Frederick Koettegen?
A. Yes.

Wilhelmina Koettegen—direct, cross.

Q. And he, I believe, is acquainted with the details of this whole matter better than you are?
A. Yes.

Q. Do you know anything about the fire escapes and exits of this place? A. Yes.

Q. Do you know of this dance hall ordinance, requiring you, in effect, to close up one of those exits? A. Yes; in the back of the main hall and the gallery, we have it through the outside, the way they can get through to the ground, it has to be closed; we closed it up.

Q. You have had to close that fire exit in order to comply with the dance hall ordinance? A. Yes; we closed it.

Q. If you close it, you are not complying with the fire ordinance are you? A. It is not so easy to get on the main floor, that is, the two exits in the back, they can get down easier, quicker.

Q. So that you cannot make a new exit that would be independent of the saloon, could you? A. Unless we go on other people's property, on Mr. Watson's property.

Q. About how many times a year is that hall used for dancing purposes? A. I guess about one hundred and twenty-five to one hundred and fifty times.

Cross Examination by Mr. Merrey.

Q. I understand, Mrs. Koettegen, that this property was owned by your first husband, who is now dead? A. It was owned by me.

Q. It was owned by you? A. Yes, sir.

Q. His name was Charles Kruchen? A. Charles Kruchen.

Q. During his life time this building was put up? A. Yes, sir.

Q. And designed? A. Yes, sir.

Wilhelmina Koettegen—cross.

Q. It was operated and run by you, the whole building? A. By my husband and me; yes, sir

Q. And you formed the corporation known as the Charles Kruchen Company? A. Yes, sir

Q. When was that formed? A. 1906; it is ten years now; it will be ten years on the first of May.

Q. Then, you as the owner of the land, made a lease to this corporation which you had formed?

A. From year to year. 10

Q. And that lease expires next May? A. The first of May, 1916; that will be ten years.

Q. Who are the stockholders of this Charles Kruchen Company? A. Four of us, or five.

Q. Are you interested? A. Yes.

Q. And your husband? A. Yes, sir.

Q. Any others of your family? A. Yes.

Q. It is a family matter; is it not? A. No; there are strangers also in it, too. 20

Q. There are some strange people in it? A. Yes.

Q. They operate the bar and saloon in the building? A. Yes, sir.

Q. You keep the lodge room yourself, do you? A. Not the lodge room; only the rooms.

Q. Then the Kruchen Company has the lease of the whole building, is that it? A. Yes.

Q. Do they run the saloon? A. Yes.

Q. Then the only interest you have in it is that you are the owner of the building? A. I get my rent every month. 30

Q. And the corporation carried on the business? A. The corporation carried on the business; yes.

Q. You have had some trouble with the county authorities with regard to this building and hall, have you not?

Wilhelmina Koettegen—cross.

Mr. McGinnis.—I object. My objection is to the substance and not to the method or form of proving any matters pertaining to any trouble with the county authorities; either criminal or otherwise.

A. I had no trouble with the county.

Q. Did anybody that had any connection with that hall have such trouble; was not your husband arrested for keeping a disorderly house there? A. Yes.

Q. And he was indicted? A. Yes.

Q. And convicted; is that true? A. Yes.

Q. And he has appealed the case now and it is still pending in the higher courts; that is true, is it not? A. Yes, sir.

Q. And that trouble was because of the method of conducting the dance hall; is that true? Do you understand the question?

Mr. McGinnis.—I am willing to let her say that that was the claim of the State.

Q. The claim of the State was that this dance hall was conducted immorally; that is what the prosecutor said and what the witnesses swore to, is it not? A. (No answer.)

Q. You don't know? A. (No answer.)

Q. You say that unless you are allowed to conduct this dance hall with an opening to the bar room, you cannot do as much business there? A. Well, the hall has nothing to do with the bar-room.

Q. You say you won't get half as many people to come and dance, if you comply with this ordinance; why is that? A. The people don't enter the hall so much; they will go outside.

Wilhelmina Koettegen—cross.

Q. Unless they can get intoxicants, they will go outside? A. They cannot get anything to eat; we always serve meals and sandwiches. Now they get a return check and go out.

Q. You really mean that unless a person can get a drink of intoxicating liquor, they won't patronize your hall? A. I guess that is it.

Q. You mean that the patrons of your hall desire to have liquor served to them? A. And meals, too. We serve meals. 10

Q. This ordinance does not prevent you from serving meals? A. No.

Q. But it does prevent you from serving drink in any room connected with the dance hall? A. Yes.

Q. And unless you can do that, you say it will interfere with your business, which is the truth, is it not? A. Yes; that is true.

Q. The patrons of the dance hall desire to be served with drink, and unless they can be served with drink they will not patronize you as much as before? A. No. 20

Q. That is what affects your business under this ordinance? A. Yes.

Q. You say that the dance hall inspector required you to shut up an exit? A. Yes; and we did.

Q. That is required under the fire laws, is that so? A. Yes; it was made that people could go out. 30

Q. He said he would not give you a license unless that was closed up? A. Yes; it is done; it was done right away.

Q. That was an exit from the dance hall which led towards the bar-room, was it not? A. No; it leads not to the bar-room; it leads to the dining room down stairs to the restaurant.

Wilhelmina Koettegen—cross.

Q. Where drinks are served? A. Yes, sir.

Q. He said that if that exit remained open, that that would connect the dance hall with the place where the liquor was sold, and that was forbidden, and that if you did not sell liquor down there, he would have permitted you to go ahead; is that so? A. I don't know; he did not say that. He closed it.

10 Q. Did you ask the mayor for a license? A. Yes; we put in forty dollars at the City Hall, and we could not see the Mayor, we went twice and we could not see him. We brought the money here, and we have been here twice and never could see the mayor.

Q. Whom did you leave the money with? A. With the man downstairs.

Q. Mr. Brennan? A. Yes.

Q. The Registrar of Licenses? A. Yes.

20 Q. Did you get it back? A. Yes.

Q. Did you ask for it back? A. Well, I guess it was laying here for about three weeks.

Q. Did anybody say you could not have a license? A. The man downstairs said it was not signed; he could not do anything; so he paid the money back.

Q. He said the license had not been signed? A. Yes.

Q. And he could not do anything? A. Yes.

30 Q. He did not say the mayor had refused to give you a license? A. No; he did not say that. He gave us the money back; we got the money back.

By Mr. McGinnis.

Q. About this dining room that has been asked about where drinks would be served with meals;

Frederick Koettegen—direct.

in order then to serve meals and not serve drinks, you would have to shut off your dining room from the entrance to the bar, would you not? A. Yes, sir.

FREDERICK KOETTEGEN, sworn as a witness on the part of the prosecutors, testifies as follows:

Direct Examination by Mr. McGinnis.

10

Q. You are the husband of Wilhelmina Koettegen who just testified? A. Yes.

Q. You live with her at 54 and 56 Van Houten street? A. I do.

Q. On the premises known as Helvetia Hall? A. Yes, sir.

Q. Will you briefly describe that property? A. The property consists of four floors; first, the bowling alleys and pool room; the next is the cafe; next to that is the dining room or resaurant with a kitchen to it; then comes the main hall with a gallery in it; next to that is the lodge room that will hold about two hundred and fifty people, and about fourteen rooms; the hall is built on two lots; it is a brick building, and the building covers the entire lots; it is about forty-eight or fifty feet by one hundred feet.

20

Q. This building was put up for the purposes for which it is now used, was it? A. This building was put up in 1902 especially for dance hall and entertainment uses.

30

Q. And from that time has it been extensively used? A. It has always been used whenever the season was on and when ever they could hire it, since I have been there.

Frederick Koettegen—direct.

Q. You, I believe, are connected with the Charles Kruchen Company? A. I am president of the Charles Kruchen Company.

Q. Did you, on behalf of this company, apply for a license under this new dance hall ordinance? A. First I notified the inspector to come and see if I had to make any alterations in Helvetia Hall in order to comply with the dance hall ordinance.

10. Q. Did the inspector come there? A. The inspector came and he informed me what I had to alter in the place in order to make it comply with the dance hall ordinance. He said that I would have to put in first, running water, and that I would have to close one of the exits which is used partly for fire exit and partly to reach from the main hall to the dining room; I would have to close that up entirely.

20. Q. To make the changes that he demanded would it require you to close any fire exits? A. I just stated that this entrance from the dining room or refreshment room to the hall would be closed; it would have to be closed.

Q. If it was closed up entirely, would you then be able to comply with the fire ordinance? A. Yes.

30. Q. Is there any other way that you can comply with the fire ordinance without going upon somebody else's property? A. I would have to open on somebody else's property, as the building has been used entirely upon the plot of ground that we own.

Q. Have you applied for a license under this new dance hall ordinance? A. I seen the mayor personally, and he advised me to go and see first, before I made the application to the regular committee—that is, to the registrar of licenses—and

Frederick Koettegen—direct.

the mayor told me I should make application there, and I made application, and I inquired several times if the application had been signed and granted. Then Mr. Brennan told me it had not; I should see the mayor. I seen the mayor and the mayor told me there would not be a license granted for Helvetia Hall as long as I was in it personally; that the objection was against me personally.

Q. Then you did not get the license? A. I did not get the license. 10

Q. You had deposited the fee as required? A. I had deposited \$40 with Mr. Brennan, the Registrar of Licenses, which I have had returned to me, the license not being granted.

Q. Previous to the passage of this ordinance, about how many times a year was this hall rented for dancing purposes? A. Well, it was about, as close as I can say, about 125 times or maybe sometimes more and sometimes less. 20

Q. What was the price for each occasion? A. The price for each occasion is about \$55 for the hall, including the dining room.

Q. Dose the compliance with this dance hall ordinance in any way affect the income of that property, the renting of the hall I mean? A. As close as I can figure, during the four months, January, February, March and April, the receipts from the dance hall and the dining room on such occasions fell off about one thousand dollars, in four months, that is, the hiring of it. 30

Q. Why is that? A. Because people do not want to hire the place when the rear is closed up so that they cannot have access to the refreshment room.

Frederick Koettegen—direct, cross.

Q. What class of people frequent your place in regard to nationality? A. All kinds of nationalities frequent the place, especially foreigners; German, Hungarians, Polish, and so forth.

Q. How much money is invested in the property, in the building and land? A. Well, I consider the building, the way it stands, to be worth about fifty-five thousand or sixty thousand dollars.

10 Q. How much is the land worth? A. Well, I should say about fifteen thousand dollars. They asked twenty thousand dollars for three lots next door.

Cross Examination by Mr. Merrey.

Q. You say that you get \$55.00 a night, about, for the rent of the hall? A. Yes.

20 Q. And what else goes with it? A. Just the dining room.

Q. Just the dining room? A. Yes, sir; the dining room and the hall.

Q. You say in the building there are fourteen other rooms besides the ones you have mentioned? A. Yes.

Q. What are they used for? A. They are used for boarders.

30 Q. That is, they are fitted up as bedrooms? A. They are bedrooms for men boarders mainly, my own living rooms, and for help.

Q. Do the fourteen rooms include your own living rooms? A. Yes; there are fourteen rooms all told, upstairs.

Q. How many of those rooms do you rent out to others than your family? A. There are about eight.

Q. There are eight bedrooms? A. Yes.

Frederick Koettegen—cross.

Q. They are rented to men you say? A. Only men.

Q. Never rented to women? A. No, sir. I have two married couples at the present time there.

Q. Are they rented out by the week or by the day? A. By the week.

Q. Did you ever rent them out by the day? A. No, sir.

Q. Your principal objection to this ordinance seems to be that it prevents the renting of your hall to those people who insist upon having refreshments in the line of intoxicating liquors? A. Not intoxicating liquors. I cannot have any more banquets because I cannot use the back way; I lost several banquets since the ordinance came into effect. 10

Q. There is no objection to having banquets there as long as there are no dances? A. I had to close the exit; the inspector said that we must close it with a solid wall; I could not have a door. 20

Q. The inspector made no objection to your holding banquets, as long as there were no dances? A. He said that I must close it with a solid wall.

Q. You have not had any dances there since you got this writ? A. Yes; I have during the summer.

Q. After the passage of the dance hall ordinance you had no dances? A. After it took effect, one. 30

Q. You made this change for the inspector? A. Yes.

Q. You have not removed that yet? A. No; that stands the way it is.

Q. If you do change that, you can go on with your banquets without any objection? A. If I open the door again, yes, because when I have a

Frederick Koettegen—cross.

banquet they usually have some entertainment; after some of these banquets they usually have a little entertainment, such as dancing, and little sketches, and so fourth; but they would not hire the place, because they would not have access to the dining room.

10 Q. One of the main objects in the passing of this dance hall ordinance was to separate the dancing from the drinking of intoxicating liquors, was it not? A. That I don't know.

Q. From your experience was it not? A. That I don't know.

Q. You are in full charge as manager of this place? A. As manager of this corporation.

Q. You have had some trouble with the county authorities, have you not? A. Well, I had a case framed up against me.

20 Q. You were indicted for keeping a disorderly house, were you not? A. Supposed to be, yes.

Q. And you were convicted? A. I suppose, yes.

Mr. McGinnis.—I object to this line of examination, that is, to the substance of it, but not to the method or manner of proof.

Q. You have taken an appeal and the matter is pending in the higher courts? A. Yes.

30 Q. And the witnesses who testified against you said that you were conducting a dance hall in an immoral manner, didn't they? A. I will prove to the city that this thing was a whole frame-up on the part, not only of the authorities, but by some money power in the City of Paterson.

Q. By some money power? A. Yes. I will prove that some day, and I have been here thirty years in this town.

Frederick Koettgen—cross.

Q. The question that I asked was that that is what these witnesses said? A. Well, not according to the evidence I got. They did not say that.

By Mr. McGinnis.

Q. You spoke of the hall being used for weddings? A. Yes.

Q. A great many of these weddings are held there by foreigners? A. Yes.

Q. And they usually have dancing either before or after the weddings? A. They have the dance and they use the dining room for their banquets, but it is very inconvenient to have that door closed. 10

Q. When you speak of a wedding party, it embraces not only the wedding but also a dance and a banquet? A. Yes, sir.

Q. It is all in the same place covered by this ordinance? A. Yes.

Q. You say that you called the attention of the dance hall inspector, so called, to this question of a door or solid wall, and that he insisted upon a solid wall; is that right? A. Yes. 20

Q. If you put a solid wall there, you could not open it for the purpose of weddings and the like and close it again? A. No.

Q. You have been asked about your arrest, indictment and conviction. It is a fact that you incurred the enmity of the police and some of the civil authorities, did you not, because you had labor meetings in your hall? A. I had labor meetings. 30

Q. And they do not want you to have them? A. They do not want me to have them.

Q. And you have been told that unless you stopped your labor meetings, they would make trouble for you? A. They would make trouble,

Frederick Koettegen—cross.

they would get back at me; they would close my hall up entirely.

Q. As a matter of fact, in this case that you have been asked about, there was practically only police testimony against you; is not that so? A. Police, yes.

Q. Mainly? A. Yes, police and a couple of stool-pigeons from New York.

10 Q. The City of Paterson has not given any compensation to the Charles Kruchen Company or to Mrs. Koettegen for closing the place up? A. Not a bit.

Q. There has been no compensation offered? A. No.

By Mr. Merrey.

20 Q. You seem to think that the police are a little spiteful in your case, but you do not charge that the Board of Aldermen in passing this ordinance, had you in mind, do you? A. Well, I will tell you, if I should speak my mind, I would tell you a different story.

Q. Labor troubles had nothing to do with the Board of Aldermen passing the ordinance?

Mr. McGinnis.—I do not claim that.

30 The taking of depositions on the part of the prosecutors in the above stated causes is closed.

EDWARD O'BRYNE,
Supreme Court Examiner.

It is stipulated that depositions on the part of the defendants will be taken on Monday morning, October 18th, 1915, at half past ten o'clock.

Frederick Koettegen—cross.

State of New Jersey, }
 County of Passaic. } ss.:

To the Honorable the Chief Justice and the Justices of the Supreme Court:

I, Edward O'Byrne, Supreme Court Examiner, do herewith certify to the Supreme Court the foregoing depositions of Wilhelmina Koettegen and Frederick Koettegen, on the part of the prosecutors.

I further certify that the said Wilhelmina Koettegen and Frederick Koettegen, were by me first duly sworn to testify to the truth, the whole truth and nothing but the truth. 10

I further certify that pursuant to stipulation entered into between the respective attorneys, the said depositions were taken down by me in shorthand notes, the signatures of the witnesses to their testimony being waived; and I certify that the foregoing is a true and correct transcript of my shorthand notes. 20

Dated, Paterson, New Jersey, October eighth, 1915.

EDWARD O'BRYNE,
Supreme Court Examiner.

NEW JERSEY SUPREME COURT.

Wilhemenia Koettegen,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

10

On Certiorari.

Charles Kruchen Company,
a corporation,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

20

On Certiorari.

William J. Duffy,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

30

On Certiorari.

Riverside Turn-Verein Har-
monie, a corporation,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants.

On Certiorari.

*Depositions.***Depositions.**

Depositions taken on the part of the defendants, pursuant to stipulation, in the above stated causes, on this eighteenth day of October, 1915, at eleven o'clock in the forenoon, at the City Hall, in the City of Paterson, before Edward O'Byrne, Supreme Court Examiner, in the presence of Edward F. Merrey, Esq., City Counsel, for the defendants, and Hon. Peter J. McGinnis (Ward and McGinnis) for the prosecutors.

10

EDWARD O'BYRNE,
Supreme Court Examiner

It is stipulated between the respective attorneys that the depositions in the above stated causes shall be taken together, and the same depositions shall be used upon the argument of each of said causes.

It is further stipulated that the depositions shall be taken down in shorthand notes by the examiner, the signatures of the witnesses being waived, and that the transcript of the shorthand notes, made by the examiner, shall have the same force and effect as if the depositions were taken down in long hand by the Examiner and signed by the witnesses.

20

ANDREW BRENNAN, sworn as a witness on the part of the defendants, testifies as follows:

30

Direct Examination by Mr. Merrey.

Q. You are the Registrar of Licenses of the City of Paterson? A. Yes.

Q. How long have you been acting as such? A. Since the twenty-ninth of December, 1914.

Q. Applications are made to you under the new dance hall ordinance of the City of Paterson for licenses? A. Yes, sir.

Andrew Brennan—direct.

Q. I refer to the license ordinance which was passed March 1st, 1915? A. Yes.

Q. How many applications for licenses have you had? A. That is, under the new ordinance?

Q. Under the new ordinance? A. Six licenses have been issued.

Q. How many applications have been made? A. Six applications.

Q. What is that? A. Six applications.

10 Q. Were there not some that were refused? A. Yes; there was—Helvetia Hall.

Q. That was an application made by the Charles Kruchen Company? A. The Charles Kruchen Company.

Q. That is the hall that Mr. Koettegen manages? A. Yes; that is his hall.

20 Q. Before the passage of this ordinance on March 1st, 1915, by the Board of Aldermen of the City of Paterson, did you issue licenses for dance halls? A. Yes.

Q. What was the fee for a license? A. The license fee was one dollar; it was issued to the individual, club or person that ran the dance, not to the hall.

Q. So that if any club or association or individual desired to carry on a dance they would come to you and get a license for a particular night? A. Yes, sir.

30 Q. And if the license was granted, they would pay a fee of how much? A. One dollar.

Q. Can you tell us how much these fees amounted to? A. The total for the year previous to May 1st, 1915, was \$575.

Q. So that when you were issuing licenses for individuals at one dollar per night you received \$575? A. Yes.

Andrew Brennan—cross.

Q. Under this new ordinance you have received so far only \$240? A. Only \$240.

Q. Previous to March 1st, 1915, were there any inspectors of dance halls? A. No, sir; not as I know of.

Q. Under the old ordinance there was nothing done about inspection, except such as might be done by the license committee? A. That is all.

Q. That was the license committee of the Board of Aldermen? A. Yes. 10

Q. They granted the license? A. They granted the license.

Q. Application was made to you for the license, and upon favorable action by the license committee, you issued the license? A. I issued the licenses.

Q. And signed them? A. Yes, sir.

Cross Examination by Mr. McGinnis.

Q. It is a fact, is it not, that this ordinance under discussion now, was in effect only between the first of May, 1915, and the eleventh of August, 1915? A. Yes, sir. . 20

Q. A period of three months and eleven days? A. Yes, sir.

Q. Now, when an application is made under this ordinance under discussion, what did you have to do to grant that license—make a certificate out? A. Why, they make the application and deposit \$40. 30

Q. And if it is approved you make out a license card, do you? A. Yes.

Q. Do you personally receive any fee out of that \$40? A. No, sir.

Q. You are working under a salary? A. Under a salary.

Andrew Brennan—cross.

Q. And the entire \$40 goes into the city treasury? A. Into the city treasury.

Q. For no special purpose? A. Not as I know of.

Q. Into the general fund? A. The general fund; yes.

10 Q. The total clerical work consists of your receiving an application, I presume, on a printed form? A. No; we haven't any printed forms—just make a form out.

Q. Really any kind of a letter or written application would do? A. Yes.

Q. And the applicant deposits \$40? A. \$40; yes.

Q. And then, if the Mayor approves of it, you issue a card or certificate permitting the place to have a dance? A. Yes.

20 Q. The clerical work to which you are put is about the same under the new ordinance as under the old way when you made out a license to each individual—I mean it is of the same general type of certificate? A. The same kind of a certificate only you get more of a license, where under the old way you got only a card.

Q. So far as the filling of it out, it is only a matter of a minute or two? A. Outside of the Mayor's name—that goes on the new license.

Q. That is about the same as you did under the old license? A. Yes.

30 Q. There is no salary paid by the city to the so-called dance hall inspectors? A. Not as I know of.

Q. And these license certificates are printed on ordinary paper? A. Yes.

Q. Nothing expensive about them? A. No.

Q. That is the end of it so far as you are concerned when the license is granted, until it runs out? A. That is the end of it, yes, sir.

Andrew Brennan—cross.

Q. And that is the end of it so far as the city is concerned? A. I suppose it is.

Q. Unless somebody, of course, is arrested for violation of the law? A. Unless there is some trouble.

Q. Do you know, of your own knowledge, how many halls there are in the City of Paterson in which dancing may be carried on? A. No; I do not.

Q. There are a great many, are there not? A. 10
Yes; there are—that is, counting the clubs.

Q. Section One of this ordinance defines the dance hall as any room, place or space in which dancing is carried on and to which admission can be had by payment of money. A definition as broad as that one would include several hundred halls in this city, would it not? A. If they were in the city, it would.

Q. Are there not several hundred halls in the city? A. I do not think so. 20

Q. If you had one hundred certificates to fill out of this kind, the whole business would not involve more than about one day's work for you? A. That is hard telling—just the work, filling out, do you mean?

Q. Yes. A. I think I could fill them out.

Q. It would be a day's work? A. Yes.

Q. One day? A. Yes.

Q. And your duties as registrar of licenses in- 30
cludes all other licenses and license matters, liquor licenses and the like? A. Yes.

Q. Junk dealers? A. Yes.

Q. Theatres and everything else? A. Yes, sir.

Q. There are thousands of these licenses issued, are there not, in the course of a year? A. Yes.

Q. All kinds of licenses? A. Yes.

T. Simpson Standeven—direct.

Q. What is your salary a year? A. \$1,000.

Q. You have not put in any extra help as a result of being obliged to fill out these six certificates, have you? A. No, sir.

T. SIMPSON STANDEVEN, one of the defendants, sworn as a witness on the part of the defendants, testifies as follows:

10

Direct Examination by Mr. Merrey.

Q. You are the City Clerk of the City of Paterson? A. Yes, sir.

Q. How long have you been City Clerk? A. Since January 1st, 1907.

Q. You were the clerk that made the return to the writ of certiorari in the present cases? A. Yes, sir.

20 Q. As City Clerk of the City of Paterson? A. Yes.

Q. And Chief Clerk of the Board of Aldermen? A. Yes.

Q. Before the passage of this dance hall ordinance on March 1st, 1915, there was a dance hall ordinance in effect in the City of Paterson, was there not? A. Yes, sir.

30 Q. Had there been a number of attempts to pass a dance hall ordinance by the Board of Aldermen? A. There were.

Q. Was there one early in the year 1915? A. There was.

Q. When was that? A. January 4th, 1915, an ordinance was introduced by Alderman King.

Q. What was the character of that ordinance? A. It provided for dance hall inspection and fixed a fee.

T. Simpson Standeven—direct.

Q. In other words, it was practically the present ordinance, except that it also included a salary for the inspectors? A. It did not include the salary for the inspectors.

Q. The one in January?

Mr. McGinnis.—I object to this line of examination on the ground that it is incompetent, immaterial and irrelevant.

10

A. It was referred to the committee and they referred the original ordinance back, and during the discussion at a previous meeting or hearing, a motion was made that the salary of the inspectors be made \$500 a year.

Q. Was that incorporated in the ordinance? A. It was.

Q. And that was in the ordinance when it came up for final passage? A. It was.

Q. What was the vote on the ordinance? A. 20
The vote was six in favor of the ordinance and five against it.

Q. Was it declared carried or lost? A. The ordinance was declared lost by President Smith, who stated that under the rules of the Board of Aldermen it required eight votes to pass an ordinance requiring the expenditure of money.

Q. There is also a provision of that kind in the city charter, is there not? A. There is.

Q. And that action, when the proposed ordinance was declared lost, was on what day? A. 30
February 8th, 1915.

Q. Shortly thereafter was the present ordinance introduced? A. At the next meeting.

Q. And the provision providing for salary was cut out of it? A. It was.

John Brophy—direct.

Q. And that ordinance was finally passed on March 1st, 1915? A. It was.

Q. What was the vote on that?

Mr. McGinnis.—I object to that as incompetent, irrelevant and immaterial.

A. It was six in favor of the passage of the ordinance and five against it.

10

No cross examination.

JOHN BROPHY, sworn as a witness on the part of the defendants, testifies as follows:

Direct Examination by Mr. Merrey.

Q. You are Clerk of the Board of Finance of the City of Paterson, are you not? A. Yes.

20

Q. That is the board that passes the tax levy? A. Yes.

Q. And which has control of the finances of the city? A. Yes.

Q. How long have you been clerk of that board? A. Since June, 1906.

Q. Has that board, since March 1st, 1915, made any appropriation of any kind for the payment of salaries of dance hall inspectors?

30

Mr. McGinnis.—I object to the question upon the ground that it is incompetent, immaterial and irrelevant.

A. Upon request, they made a transfer of \$170 for that purpose.

Q. When? A. On March 25th last.

John Brophy—direct.

Q. Have you the minutes of the Board of Finance showing that action taken by the Board of Finance? A. Yes.

Q. Are they here? A. Yes.

Mr. Merrey.—We offer the minutes in evidence.

Mr. McGinnis.—I object to them upon the ground that they are immaterial, incompetent and irrelevant.

10

Q. When does the fiscal year begin? A. July 1st and ends June 30th.

Q. And the appropriation of March 25th, 1915, was to cover what period for the dance hall inspectors' salary? A. A period of two months, May and June.

Q. That was at the rate of a little over \$1,000 per year? A. Yes.

Q. Was that money ever expended? A. No; it was not.

20

Q. Did the Board of Aldermen ever make application for it or certify to any payroll? A. No, sir.

Q. Was any request made for an appropriation for the fiscal year beginning July 1st, 1915, for an appropriation to cover that year? A. No, sir.

Q. What is the practice in paying the officers of the City of Paterson their salaries?

30

Mr. McGinnis.—Objected to as incompetent, immaterial and irrelevant.

A. It is customary to list their names and the amounts due them, and the board signs the list as an authority for the treasurer to pay the money.

John Brophy—direct, cross.

Q. Are they paid out of appropriations made by the Board of Finance? A. Specific appropriations.

Q. Every officer of the City of Paterson is paid out of an appropriation made by the Board of Finance? A. Yes.

Q. For instance, the building inspector is paid in that way, is he not? A. Yes.

10 Q. And the fees from his office are paid into what accounts? A. The general receipts account.

Q. Is there an account called "General Receipts"? A. Yes.

Q. Do you place in that account all the money which you receive for fees and the like? A. All those except licenses. There is an account known as the license account, liquors and all such licenses are put into the license account. The other fees are credited to the general receipts.

20 Q. The officers are paid out of the general treasury of the city upon appropriations made by the Board of Finance? A. Yes.

Q. To each board or body having control of that officer? A. Yes.

Cross-Examination by Mr. McGinnis.

Q. If I remember, the names of the two dance hall inspectors are John Menton and Mrs. Headifen? A. Yes.

30 Q. This money was not appropriated to Mr. Menton and Mrs. Headifen, was it? A. My recollection is that it was simply a request to transfer—

Q. An appropriation of \$170 by the Board of Aldermen for the purpose of paying salaries of dance hall inspectors would have to be passed first? A. My recollection of it is that it was simply a request to pay a male and female inspector, not named, for the month of June, \$170.

John J. Menton—direct.

Q. Unless the Board of Aldermen were to take some affirmative action fixing a salary for dance hall inspection, this money could not have been used? A. My recollection is that there was not any specific mention of that at that time; that it was simply a request for money.

Q. You know that as a matter of fact? A. I understand such is the case.

Q. Could they be paid unless there was a payroll sent in with their names set out? A. They could not. 10

Q. That was never done? A. That was never done.

JOHN J. MENTON, sworn as a witness on the part of the defendants, testifies as follows:

Direct Examination by Mr. Merrey.

Q. Were you appointed as dance hall inspector by Mayor Fordyce of this city? A. I was. 20

Q. Under the ordinance adopted by the Board of Aldermen on March 1st, 1915? A. Yes.

Q. Was there another inspector appointed at the same time? A. Yes; there was.

Q. Who was that inspector? A. Mrs. Grace Headifen.

Q. Did you take up the duties of your office? A. I did.

Q. Did you make inspection of dance halls? A. I did. 30

Q. Have you been paid by the city for that? A. No, sir.

Q. Have you been paid by anybody? A. I have been paid by a commission known as the Dance Hall Commission of Paterson.

John J. Menton—direct.

Q. That is a private association? A. Yes.

Q. Which has been advocating dance hall supervision? A. Yes.

Mr. McGinnis.—I object to this testimony and move that it be stricken out, upon the ground that it has no relevance to the issue here.

10 Q. You have been paid how much? A. At the rate of \$500 a year.

Q. Have they also paid Mrs. Headifen? A. I believe they have.

Q. How much of your time does it take up to investigate dance halls?

20 *Mr. McGinnis.*—I object to that upon the ground that it is incompetent, irrelevant and immaterial. This witness is a volunteer in this matter.

A. That is a hard question to determine correctly, but I should say that it takes up at least, to investigate the hall itself and pass on any dances that would be held there, it would probably take up eight or ten hours a week; and on the average to pass on a dance only it would take up about three hours on Saturday evening when the dances are being held now. Later on, of course,
30 I cannot determine that question.

Q. Have you investigated certain dance halls upon applications for license? A. Yes, sir; I have.

Q. How many? A. Just the six at the present time.

Q. How many halls have you investigated? A. I have investigated nine.

John J. Menton—direct.

Q. You have recommended the refusal of a license to how many? A. To two.

Q. And the other one? A. The third one was during the time the suspension of the ordinance was in effect and has not been passed on because no application was made.

Q. About how many public dance halls are there in the City of Paterson? A. About twenty-one, I believe, all told.

Q. Are there any other places besides those public dance halls where dances are held? A. Yes; there are. There are back rooms of saloons that could hardly be termed halls. 10

Mr. McGinnis.—If they are not termed dance halls, I want it stricken out.

Q. They are places where dances are held? A. Yes.

Q. Are there many of these? A. There are about fifteen or sixteen of these halls. 20

Q. So that altogether, would you say that there are thirty-five or thirty-six places where dances are held in the city of Paterson? A. Yes, sir; where they might be held.

Q. Did you inspect the place called Helvetia Hall run by a man named Koettgen, as manager, or president, of the Charles Kruchen Company? A. Yes, sir; I have. 30

Q. What did you report on that? A. I reported that the hall, as I found it, would be eligible for a license, provided that water be installed in the hall, and that one doorway which was a direct connection with the barroom be closed up, provided the reputation of the place would not be detrimental to the issuing of the license.

John J. Menton—direct.

Q. Did you investigate the place owned by Duffy on Main street. known as Arold Hall? A. Yes; I have.

Q. What did you report on that? A. I reported that the place would be eligible for a license provided they would close off the communication of four doors from the hall to the bar-room direct and also install water and the necessary toilets as provided by the ordinance.

10 Q. Have they done that? A. They have not.

Q. Did Koettegen comply with your request? A. He did not.

Q. Did you investigate the hall conducted by the Riverside Turn-Verein Harmonie? A. No, sir; I have not.

Q. Was any application made for a license here? A. Never that I know of.

Q. What are the two places that you had reported adversely on—Duffy's and Helvetia Hall? A. No. A place known as Dewalsch's. on Thirty-third street.

Q. What did you report about that place? A. He applied for a license, and the hall was connected with the bar-room direct, and they had no toilets in the hall, making it necessary for patrons to enter the saloon to go the toilet, and until they would comply with the conditions of the ordinance, I recommended that no license be issued.

30 Q. Do you attend all the dances that are held at these various places? A. I attend all that I know of being held. There are many that can be held, as I have no way of knowing of them except by the advertisements.

Q. Can the ordinance be enforced unless inspectors visit most of the dances? A. The ordinance

John J. Menton—direct.

cannot be enforced unless there is an inspection, except that any person might make a complaint if there is a violation. That is provided in the ordinance.

Q. What do you do in the way of inspecting dances? A. I stay in the dance hall itself, or in the bar-room connected therewith at the present time when the ordinance is suspended.

Q. While you are performing your duty as inspector, it is your duty to go there and find out if the dance is conducted in a moral manner? 10

Mr. McGinnis.—I object to the question upon the ground that it is incompetent, irrelevant and immaterial.

A. Yes.

Q. Have you ever found instances where it is not conducted in a moral manner? A. Yes; I have. 20

Q. At the various dance halls in the city? A. At one hall principally I found what would be a violation of the ordinance if it was in effect, since that time.

Q. What was the character of that violation?

Mr. McGinnis.—I object to the question upon the ground that it is incompetent, immaterial and irrelevant. 30

A. Immoral dancing, as instructed to-day by dancing instructors, is the position assumed by various couples, certain forms known as spiling, pivoting, and so forth, which are done to raise the female's skirts in such a way as would be considered immoral or immodest at least.

John J. Menton—cross.

Q. Do you find that there is any tendency toward intoxication at certain halls? A. Yes; there is. We have noticed many couples leaving the hall and entering the bar-room many times, coming back after several dances in such a way that you could not call entirely intoxicated, but under the influence of liquor, so that in many cases they do not know what they are doing. In fact I have
10 seen them carried away from the hall.

Mr. McGinnis.—I object to the answer and move that it be stricken out upon the ground that it is irrelevant, immaterial and incompetent.

Cross Examination by Mr. McGinnis:

Q. You say that there are only twenty-one halls in the city of Paterson in which dancing may be
20 carried on? A. I do not. I said that there are about twenty-one halls, that I would call dance halls, that would be used by the general public.

Q. It is not what you or I might call them. The ordinance says: "Any hall or place or space to which admission may be had upon payment of a fee." Is it not a fact that there are a large number of churches which have halls where dances are held—for instance, St. Paul's Parish House,
30 and— A. (Interrupting) I have never included, as near as I can recollect, in that number, church halls as dance halls. Still my knowledge may not be absolutely definite, but as I know, I think there are twenty-one dance halls.

Q. Twenty-one dance halls of all kinds in the city of Paterson? A. That is what I would term public dance halls that the public would be admitted to.

John J. Menton—cross.

Q. And places where they can hold dances and charge admission fees? A. My former testimony was that there were about fourteen or fifteen places where they hold dances that would not be termed dance halls.

Q. Are there not twenty-one church halls in Paterson? A. To the best of my recollection, that would be all the halls that I would consider.

Q. I mean, excluding certain churches that do not permit dancing, do you mean to tell me that there are not at least twenty church halls in the city of Paterson? A. I mean to tell you what I have said, that is, that there are twenty-one or twenty-two places known as public halls, irrespective of whether they are churches or otherwise, that I know of. 10

Q. How many church halls are there, exclusive of anything else? A. I would have to stop and count them. 20

Q. Go ahead and count them. Take your time and answer the question. A. Well, I can only count here about eleven.

Q. Let me help you out. How many Episcopal churches are there in the city of Paterson? A. I don't know.

Q. Let us see: St. Paul's, St. Mark's, Holy Communion, Trinity, St. Luke's—that is five, is it not? Are not dances held in every one of these halls? A. Not that I know. 30

Q. Don't you know? A. No.

Q. Would you be surprised if I told you that that is a fact? A. That is not for me to say.

Q. Eh? A. That is not for me to say.

Q. You don't know? A. No.

John J. Menton—cross.

Q. How many Catholic churches are there in Paterson that have halls? A. I don't know.

Q. You don't know that either? A. No.

Q. Don't be sparring. Just think a minute. A. I cannot count them.

Q. Can you tell me how many Catholic parishes there are in Paterson—how many Catholic churches there are? A. Not at the present time; no.

10 Q. Whether ten or twelve or thirteen? A. There were ten to my recollection.

Q. Has not every one a hall, connected with either it or the school, or in some way connected with the church? A. I do not believe they all have.

Q. Let us take the other denominations. I know the Methodists forbid dances. I think the other churches permit dances, don't they? A. I don't know.

20 Q. Is it not a fact that there are about forty church halls where dances can be carried on and where they are carried on? A. Not to my knowledge.

Q. What is the matter? Have you lost your memory? You have been working on this thing for a month, inspecting halls? A. I have inspected halls that have made applications for licenses.

30 Q. All you have inspected are the six or seven halls that are most in the public eye? A. Where applications have been made.

Q. And you stopped there? A. And a few others that were about to apply, as I understood.

Q. So that, as a matter of fact, outside of those places where application has been made and perhaps two or three others that are well known publicly, you cannot tell me how many halls there

John J. Menton—cross.

are in Paterson in which there have been dances in the past year? A. Let me understand that question.

Q. Can you tell me, one way or the other, how many halls or rooms there are in the city of Paterson, during the past year, in which there have been dances for which admission has been charged,—and I include in that, churches, public halls, school halls and the like? A. I cannot.

Q. Now, you say that Koettegen did not comply with your requirements. Is it not a fact that in Koettegen's place you wanted him to wall up the door? A. I wanted him to close up the door that was a direct communication to the bar-room. 10

Q. He wanted to lock that door or temporarily bar it up so that on occasions when the hall was not used for dancing, it could be opened? A. I wanted the door closed up.

Q. Permanently closed? A. As the character of the place would allow— 20

Q. (Interrupting) You wanted the door permanently closed? A. I wanted the door closed.

Q. Permanently closed? A. Yes; permanently closed.

Q. On your direct examination you made the statement that there are four doors that open into the bar room in Duffy's place. You do not want to repeat that, do you? A. There are four doors that open directly from the hall into the bar-room. 30

Q. Don't you know that there is only one door that opens directly from the hall into the bar-room? A. No; I do not.

John J. Menton—cross.

Q. That the other three doors open into a room in the rear of the bar that is used as a lunch room? A. No; I do not.

Q. Do you know where the stage is in that hall, that sort of a balcony which is used by speakers? A. Yes.

Q. Right underneath is there not a door that opens right into that part occupied by Mr. Duffy?

10 A. You mean the bandstand or balcony?

Q. What I call the bandstand or the balcony; there is only one balcony there, is there not? A. There is a gallery to the side.

Q. When you come in from the front there is a sort of a balcony at the rear of the hall? A. Yes.

Q. And to right to the left of it, as you face the door coming in, there is a door, is not there, that goes into Mr. Duffy's place; as you stand in the balcony and face the street, on the left there is a door that goes into Mr. Duffy's place? A. Yes.

20

Q. That is one of the four doors? A. Yes.

Q. You don't call that a door into Duffy's bar room? A. Yes; I do; because there is a bar in that room that he serves drinks from, the only place he serves drinks from to patrons when there is a dance going on is that bar in that room.

Q. That is what you mean? A. That is a bar room.

30

Q. That is what you mean? A. That is a bar he uses for the ordinary street customers, is it not? A. Yes; it is.

Q. The Riverside Turn-Verein hall, you did not inspect that? A. No; I have no application.

Q. So, you are not in a position to say whether they would comply with it or not? A. No.

John J. Menton—cross.

Q. As a matter of fact, if they have a door opening directly into the hall from the bar room and also from the hall into a room at the end of the hall, according to your opinion they would not be entitled to a license? A. If I saw the place I would be able to pass on it.

Q. Listen to the question again: Would you, without changes being made, allow them to use that hall for dances, if it appeared that directly across the front of the hall there was a bar room that opened directly on the hall; would that be permissible to pass that hall? A. Not unless the door leading to that hall was closed temporarily while the dancing was going on. 10

Q. What do you call temporarily? If it were shut up and locked, would that be sufficient? A. No; I would insist upon the door being closed in such a manner that it could not be opened during the time the dancing was being carried on. I do not think a lock is sufficient. 20

Q. You spoke about your passing on what constituted immoral dancing. Is a waltz immoral dancing—the ordinary waltz? A. I would not consider it such; no.

Q. Do you know that the first time that the waltz was ever danced in America, that the couple were hissed off the floor? A. That is possible. 30

Q. Would you call the dancing in the Metropolitan Opera House immoral because they have ballet dances? A. I have not anything to do with it.

Q. If you had control of it? A. If they had anything immoral and I was inspector, I would stop it.

John J. Menton—cross.

Q. Would you call that immoral—a ballot dance?

A. I could not tell you.

Q. Is it your notion that if they show anything above the ankle it is immoral? A. No; it is not. I did not say so.

10 Q. Would you object to dancing where—A. (Interrupting) I have never objected to anything that the general public would not object to had they seen them. Even dance hall owners, including Duffy himself, have objected to dances in their own halls. Why, even on Saturday he objected to it himself.

Mr. McGinnis.—I object to this and move that it be stricken out upon the ground that it is not re-direct examination.

The taking of depositions on the part of the defendants is closed.

20

EDWARD O'BYRNE,

Supreme Court Examiner.

30

*Certificate of Certification.***Certificate of Certification.**

State of New Jersey, }
 County of Passaic. } ss.:

To His Honor the Chief Justice and the Justices
 of the Supreme Court:

I, Edward O'Byrne, Supreme Court Examiner,
 do certify herewith to the Justices of the Supreme
 Court the foregoing depositions of Andrew Bren- 10
 nan, T. Simpson Standeven, John Brophy and John
 J. Menton, on the part of the defendants in the
 above stated cause.

I further certify that each of said witnesses was
 by me first duly sworn to testify to the truth the
 whole truth and nothing but the truth.

I further certify that pursuant to stipulation
 entered into between the respective attorneys, said 20
 depositions were taken down by me in shorthand
 notes. the signatures of the witnesses to their tes-
 timony being waived; and I do certify that the
 foregoing is a true and correct transcript of such
 shorthand notes so taken by me.

Dated, Paterson, New Jersey, October 18th, 1915.

EDWARD O'BYRNE,
Supreme Court Examiner.

Reasons.

NEW JERSEY SUPREME COURT.

Wilhemenia Koettegen,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,
Defendants

On Certiorari.

10

Reasons.

The Prosecutor, by Ward & McGinnis, her attorneys hereby submits the following reasons setting forth that the Ordinance passed by the Board of Aldermen of the City of Paterson was illegal.

1. Because the effort of the enforcement of the Ordinance would be to confiscate the property of the prosecutor.

20

2. Because it would effect the taking the property of the prosecutor without just compensation and therefore is unconstitutional.

3. Because the Ordinance is illegal and unconstitutional and defective in that it was passed without any Legislative authorization to do so.

4. Because the fee charged as a license fee, is excessive and exorbitant and therefore illegal.

30

5. Because if said license is a measure for revenue, said ordinance is illegal as it was passed by the Board of Aldermen of the City of Paterson, and said Board had no authority to pass any ordinances for the purpose of raising a revenue, such power being vested in other municipal bodies.

6. Because if such ordinance was for the purpose of raising a revenue, the same was not passed

Reasons.

by the said Board of Aldermen of the City of Paterson in the manner required by law.

7. Because the Board of Aldermen of the City of Paterson had no authority to pass said ordinance, no authority having ever been delegated by the Legislature of New Jersey to any municipal body to pass said ordinance.

8. Because the said ordinance is special Legislation.

9. Because the penalty prescribed for the violation of said ordinance is unlawful, and not within the statute authorizing the passage of the ordinance. 10

10. Because that part of Section five which prescribes the penalty of the violation of the ordinance is not the penalty prescribed by Legislature.

11. Because by said ordinance the discretion of granting or refusing said license is unlawfully delegated to others than said Board of Aldermen. 20

12. Because by said ordinance the power of revoking said ordinance is delegated to others, instead of remaining in said Board of Aldermen.

13. Because the ordinance in diverse other respects is illegal and unconstitutional.

14. Because the ordinance respecting dances between the hours of one a. m. and seven a. m. is oppressive and unreasonable.

Dated, July 23, 1915. 30

WARD & MCGINNIS,
Attorneys of Prosecutor.

Additional Reasons.

NEW JERSEY SUPREME COURT.

	Charles Kruchen Company, a corporation,	} <i>Prosecutor,</i>
	vs.	
10	The Mayor and Aldermen of the City of Paterson and T. Simpson Standeven,	} <i>Defendants.</i>

Additional Reasons.

In the above case, the first, twelfth and last reasons are the same as those assigned in the Koetegen and Duffy cases. The additional reason assigned in the above case is as follows:

13. Because a license was refused to the
20 Charles Kruchen Company.
Dated, Puly 23, 1915.

WARD & MCGINNIS,
Attorneys of Prosecutor.

Additional Reasons.

NEW JERSEY SUPREME COURT

Riverside Turn Verein Har-
monie, a corporation,

Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson, and T.
Simpson Standeven,

Defendants.

10

Additional Reasons.

In the above case, the first, twelfth and last reasons are the same as those assigned in the Koetegen and Duffy cases.

The additional reasons assigned in the above case is as follows:

13. Because it is impossible for the Riverside Turn Verein Harmonie, to comply with the requirements of said ordinance, and therefore it cannot obtain a license.

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Dated, July 23, 1915.

WARD & MCGINNIS,

Attorneys of Prosecutor

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Notice of Appeal.

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">Wilhelmina Koettegen, <i>Prosecutor,</i></p> <p style="text-align: center;">vs.</p> <p style="text-align: center;">The Mayor and Aldermen of the City of Paterson, and T. Simpson Standeven, <i>Defendants.</i></p>	}	<i>On Certiorari.</i>
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Notice of Appeal, and Grounds of Appeal.

To Randall B. Lewis, Attorney,
and
Francis Scott, Counsel for Defendants,
Sir:

20 Take notice, that the prosecutor, Wilhelmina Koettegen, appeals from the whole of the judgment entered in said cause on the following grounds:

1. Because the Supreme Court committed error in failing to set aside the ordinance brought before it for review.

2. Because the Supreme Court should have declared said ordinance unconstitutional, defective or void, for the reasons presented before said Supreme Court.

30 3. Because the Supreme Court should have set aside said ordinance for the following reasons:

(a) Because the effect of the enforcement of the ordinance would be to confiscate the property of the prosecutor.

(b) Because it would effect the taking the property of the prosecutor without just compensation and therefore is unconstitutional.

Notice of Appeal.

(c) Because the ordinance is illegal and unconstitutional and defective in that it was passed without any legislative authorization to do so.

(d) Because the fee charged as a license fee is excessive and exorbitant and therefore illegal.

(e) Because if said license is a measure for revenue, said ordinance is illegal as it was passed by the Board of Aldermen of the City of Paterson, and said board had no authority to pass any ordinances for the purpose of raising a revenue, such power being vested in other municipal bodies.

10

(f) Because if such ordinance was for the purpose of raising a revenue, the same was not passed by the said Board of Aldermen of the City of Paterson in the manner required by law.

(g) Because the Board of Aldermen of the City of Paterson had no authority to pass said ordinance, no authority having even been delegated by the Legislature of New Jersey to any municipal body to pass said ordinance.

20

(h) Because the said ordinance is special legislation.

(i) Because the penalty prescribed for the violation of said ordinance is unlawful, and not within the statute authorizing the passage of the ordinance.

(j) Because that part of Section five which prescribes the penalty of the violation of the ordinance is not the penalty prescribed by legislature.

30

(k) Because by said ordinance the discretion of granting or refusing said license is unlawfully delegated to others than said Board of Aldermen.

(l) Because by said ordinance the power of revoking said ordinance is delegated to others instead of remaining in said Board of Aldermen.

Notice of Appeal.

(m) Because the ordinance in divers other respects is illegal and unconstitutional.

(n) Because the ordinance respecting dances between the hours of one A. M. and seven A. M. is oppressive and unreasonable.

WARD & MCGINNIS,
Attorneys of Prosecutor.

The grounds of appeal in the above cases being
10 identical, by arrangement between counsel, only
one set is printed.

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New Jersey Court of Errors & Appeals

Wilhelmina Koettgen,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson and T.
Simpson Standeven,
Defendants.

On Certiorari.

William J. Duffy,
Prosecutor,

vs.

The Mayor and Aldermen of
the City of Paterson and T.
Simpson Standeven,
Defendants.

On Certiorari.

Charles Kruchen Company, a
corporation,

vs.

The Mayor and Aldermen of
the City of Paterson and T.
Simpson Standeven,
Defendants.

On Certiorari.

Riverside Turn Verein Har-
monie, a corporation,
Plaintiff,

vs.

The Mayor and Aldermen of
the City of Paterson and T.
Simpson Standeven,
Defendants.

On Certiorari.

Statement of Facts.

The cereiorari brings up for review a dance hall ordinance passed by the Board of Aldermen of Paterson in March, 1915. The Board passed ordinance by virtue of the power given to them, or attempted to be given by the Legislature of 1913, Chapter 24, page 38. The Supreme Court upheld the ordinance, and the case is now before the court on an appeal from the decision of the Supreme Court.

POINT I.

The ordinance was passed without legislative authority.

Under this point the Supreme Court decided as follows:

“The authority to pass the ordinance in question is conferred upon the board of aldermen by the provisions of the City Charter. If the authority thus conferred is in one or more respects curtailed or superseded by the Act of 1913, still the ordinance as a whole can not be set aside in this proceeding in which no conviction has been had.”

We contend, however, with all due regard to the opinion of the Supreme Court, that the Board of Aldermen did not have legislative sanction to pass the particular ordinance it did. It will be noted that the court does not say that the Board of Aldermen did or did not have the power, they do not pass upon the question, but simply point out that there was no judgment of conviction, and therefore, the point can be raised by the prosecutors.

We propose to discuss this proposition under another point, and will therefore, at this time present the reasons in justification of our contention that there was no legislative authority for the Board of Aldermen to act.

The power to pass dance hall ordinances was given by the Legislature of 1913, Chapter 24, page 38.

Section 1 of that act defines a public dance hall as follows:

“Any room, place or space in which dancing is carried on and to which admission can be had either with or without the payment of a fee, or by the purchase, possession in presentation of a ticket or token, or in which a charge is made for caring for clothing or other property, located upon premises which are licensed to sell liquors, other than a hotel having upwards of fifty bedrooms.

The City Ordinance, however, defines a dance hall to be:

“Section 1. The words “Public dance hall,” when used in this ordinance, shall be taken to mean any room, place or space in the City of Paterson in which dancing is carried on and to which admission can be had by payment of a fee, or by the purchase, possession or presentation of a ticket or token, or in which a charge is made for caring for clothing or other property, or,

Any room, place or space in the City of Paterson located upon the premises which

are licensed to sell intoxicating liquors in which dancing is carried on and to which the public may gain admission, either with or without the payment of fee." (P. 13-14 of the State of Case.)

It will be seen from reading the legislative enactment that in addition to the admission fee, etc., being charged the dance hall must be "located upon premises which are licensed to sell liquors." The legislative definition was distinctly applied only to a dance hall upon premises licensed to sell liquors. The City Ordinance divided this definition into two parts, using the disjunctive "or," thereby completely changing the definition. In the City Ordinance a dance hall would be a room in which admission fee was received etc., regardless of whether intoxicating liquors were licensed to be sold upon the premises or not, and would also mean that any room in which dancing could be carried on, regardless of an admission fee, so long as it was upon premises licensed to sell intoxicating liquors.

To illustrate the difference a dance hall a mile away from a place licensed to sell liquors and totally disconnected from it, would come under the City Ordinance as a public dance hall, if an admission was charged whereas under the statute it would only be a public dance hall if intoxicating liquors were actually licensed to be sold upon the place.

Again, under the statutory definition, the room in which dancing would be carried on, would be only a public dance hall, if an admission fee was charged, whereas under the City Ordinance, the charge, or failure to charge an admission fee would be immaterial.

POINT II.**The license fee is excessive.**

The Supreme Court on this point in its opinion said:

“The fee fixed by the ordinance is not excessive or unreasonable in view of the incidental expenses connected with its enforcement, including cost of constant inspection. The fee thus fixed is therefore incident to regulation and not for revenue.”

The Supreme Court in its opinion did not point out any reason in support of its statement that the fee was not excessive. The mere statement is made that it was not excessive, and that is all this court has before it so far as the Supreme Court is concerned. We insist that an examination of the evidence under this point shows conclusively that the fee was excessive. If, under all the circumstances the fixed fee of \$40.00 was not excessive, then it is a clear reversal of the rule in the case of *North Hudson Co., Railway vs. Hoboken*, 41 N. J. Law, page 71, where a license fee of \$15.00 was fixed for every one-horse car and \$25.00 for every two-horse car, as against \$40.00 in this case, and there was no more labor in connection with the enforcement of the dance hall ordinance than in connection with the horse car ordinance.

According to the testimony of Mr. Menton, a dance hall inspector, there are about thirty-five or thirty-six places where dances are held in the City of Paterson, and which would require a license. (P. 67, lines 20-30.) The only reason these other places had not secured licenses was

due to the fact that the writ of certiorari was taken out, and thereby the operation of the Ordinance was suspended. If all of these places mentioned by Mr. Menton were to take out a license, it would net to the City of Paterson an income of \$1,400.00 or more a year. Out of this sum, there would not have been a dollar of expense. The two inspectors received no compensation, while Mr. Brennan testified that he was working under a salary (P. 57, lines 30-40); that he would not receive one cent of compensation out of these licenses. (P. 57, Line 36); that the entire \$40.00 would go to the City Treasury, and to the joint fund of the City. (P. 58, lines 1-6). The total clerical work consisted in filling out a printed form of license. (P. 58). These certificates were on ordinary paper, nothing expensive about them, and the labor of filling them out, would not occupy more than a minute or two. (P. 58, lines 25-35.) Witness Brennan made reference to a former dance ordinance in Paterson, in which a fee of one dollar was charged. The labor of granting the license under the old ordinance was greater, if anything, than that under the new ordinance.

The testimony of Mr. Brennan clearly indicated that the entire \$40.00 was absolutely profit to the City. This being so, there can be no question that under the law the ordinance in question was illegal as a license or regulation measure. In this connection it may be said in passing that if it was intended to be a measure for revenue, that the Board of Aldermen of the City of Paterson, have no authority under the law to pass a revenue measure, that power being reposed either in the Board of Public Works, or the Board of Finance. This we will discuss under another point.

The law on this subject is very clear. The case of *North Hudson Co., Railway v. Hoboken*, 41 N. J. Law, page 71 is in point. There the court held:

“But a municipal corporation has no power to require a horse railway company, having its rails down and in use, under the act incorporating it, to take out a license and pay a license fee as a means of taxation, unless power is given to the city to resort to licenses and license fees for revenue purposes. A provision in its charter granting power “to license and regulate,” does not authorize the city to exact license fees for revenue purposes.”

“A power to license, when especially given in the charter of a city, is nevertheless a police power. The exaction of license fees for revenue purposes is the exercise of the power of taxation.”

“The distinction between the power to license as a police regulation and the same power as a revenue measure is of the utmost importance. If granted with a view to revenue, the amount of the tax, if not limited by the charter, is in the discretion and judgment of the municipal authorities; if given as a police power, it must be exercised as a means of regulation only, and cannot be used as a source of revenue.”

The certiorari in that case reviewed an ordinance of the City of Hoboken, which provided for a license of \$15.00, for every one-horse car and \$25.00 for every two-horse car, operating in the city.

Justice Depue said in his opinion:

“The distinction between the power of taxation for revenue and police powers which are granted for the maintenance of order and the administration of the internal affairs of a municipality, is pointed out in *State, Benson pros., v. Hoboken, Vroom* 280. Under a power simply to regulate, an ordinance cannot be passed to tax for revenue purposes. In the course of the administration of such a power the public treasury may be incidentally benefitted by the imposition of fines and penalties, but in all such cases it must appear that the means adopted are such as are reasonably necessary to accomplish the purpose of a regulation. Under such a power the right of taxation for raising revenue is not conferred.” (41 N. J. Law—page 79) . . . The exaction of a license for revenue purposes is clearly an exercise of the power of taxation, and cannot be sustained, unless the charter plainly shows an intent to confer that power. *Cooley on Const. Lim.* 201; *1 Dillon on Mun. Cor.* 291.” (Page 80.)

Justice Depue in his opinion also quoted with approval, Chief Justice Cooley’s rule that the fee to be charged when used as a police power, should be the probable expense of issuing a license (P. 81). In this case as Justice Depue pointed out, that the amount the measure would have yielded, would have been \$1,745.00 annually. There was very little expense attached to the issuing of the license, and the railway company got nothing for its licensing fee, except the privilege

to run its car, a privilege it had under the general law. The ordinance in that case was set aside.

In the case of *Muhlenbrick vs. Long Branch Commissioners*, N. J. Law 42, P. 364, the court held:

“When the grant is not for revenue, but for regulation merely, a fee of license may be enacted, but it should not exceed the necessary or proper expense of issuing the license.” (P. 367).

The case of *Gaynor vs. Roll* 79 N. J. Law, P. 402 is another instance of an attempt to collect revenue under the guise of license. In that case an attempt was made to impose a fee of \$250.00 from any person who carried on the business of bill-poster.

Justice Bergen in that case said:

“The power to regulate does not authorize the imposition of a tax for revenue, and the power to license is of the same nature as the power to regulate, and therefore all the powers conferred by the act of 1905 is a police and not a taxing power.” (Page 403).

This act is labeled as a measure to regulate. The amount of the fee would indicate an attempt to levy a tax.

In the case of *Shackleton vs. The Board of Councilmen of Guttenberg*, in the County of Hudson, 39 N. J. Law, page 660, the court laid down the rule that:

“Every lawful tax rests upon legislative enactment, and when subordinate bodies seek to impose such a burden upon the citizens, they must show a clear and unmistakable authority so to do, derived from the expressed words or necessary implication of a statute.”

Said Judge Dixon in that case:

“The power of taxation is a high prerogative of sovereignty, and one whose exercise directly divests the citizen of his property, its grant by application is but little favored, even as compared with other implied grants; and the inference of its existence, in any case, is easily rebutted. An authority to wield it cannot be collected by doubtful inference from other powers, or powers relating to other subjects, nor deduced from any considerations of convenience or advantage. Nothing short of express words or necessary implication will answer the purpose. It should never be exercised where the right is doubtful.” (Page 662-663).

See also the case of *Kipp vs. The City of Paterson*, 26 N. J. Law, 298.

In the *Kipp* case it was held illegal for the City of Paterson to collect the small fee of 5c from farmers standing along the market on Main street of said City, as such power was not expressly conferred in the city charter.

To the same effect is the case of *Atlantic City vs. Hensley*, 76 N. J. Law, which was an attempt

to license hotels based upon the number of sleeping rooms.

The light work attached to the issuing of the license, against the large fee charged, clearly indicates that the amount charged was excessive, if levied as police regulation, as we have intimated above. To uphold it in anywise it must be construed to be a police regulation; otherwise it would cause same to fail, by virtue of the fact that it was passed by the Board of Aldermen, who had no power to pass a measure for revenue. This we have intimated above and will show under the point next following.

POINT III.

If the license was a measure for revenue the Board of Aldermen had no power to pass same.

The Supreme Court did not pass upon this point in its opinion. We again present it, however, for the consideration of this Court.

Up to the year 1907 the government of the City of Paterson was lodged in the Mayor and Aldermen. In the year 1907 three commissions, known as the Board of Finance, the Board of Fire and Police Commissioners and the Board of Public Works were created, each by a separate act. The result of these three measures was to take all the power of government from the Board of Aldermen, except to grant licenses purely as a regulation and not to raise revenue.

The act creating the Board of Finance is found at page 91, in the laws of 1907.

By section 2 of this act it is provided:

“The said board shall be in the place of and be substituted for, and shall be invested with all the powers and duties now exercised by any board of finance, finance committee of any board of aldermen or common council in any such city in virtue of any law of this State in regard to the control and management of the finances of such city, the levying of taxes and fixing the annual tax or tax levy or tax ordinance of such city, and the collection of taxes and assessments. . . . And to do and perform every power and duty heretofore performed by any other board, department or authority in regard to the raising and borrowing of money, or any other of the financial affairs of such city.”

The reading of said statute, together with the fact that the City of Paterson has not attempted to pass any measure, through the Board of Aldermen, having for its object, the raising of revenue, since the creation of these three boards or commissions in 1907, indicates very clearly that if the fee of \$40.00 was intended to be a measure for revenue, that it was passed by the wrong body. We repeat, that the amount charged clearly indicates that it was a revenue measure.

POINT IV.

The Board of Aldermen unlawfully delegated the discretion of granting or refusing a license to the Mayor.

The Supreme Court considered this point, but held that the ordinance was not an illegal delega

tion of the charter powers to the mayor. (See opinion page "D"—L. 12-26).

It is difficult to see how the Supreme Court can hold that there was no delegation of power to the Mayor in this case when it is considered that in the final analysis the Mayor granted or revoked licenses without the Board of Aldermen's approval or disapproval of such action. As the ordinance stood for passage the moment the Board of Aldermen passed that ordinance their power of control ceased. It was not the same as appointing a subordinate official to carry out the provisions of the act, but it was in effect transferring to another department of the City Government, viz., the executive, the complete control and enforcement of the Act.

Section 3, of the ordinance (P. 14, L. 18-30) distinctly states that the application for a license shall "be prepared and presented to the mayor, who, at his discretion may grant or refuse the same." No license shall become effective until it has received the approval of the mayor, and in case he shall refuse to approve such license, the money so paid to the registrar of licenses shall be returned to the applicant or his attorney properly authorized to receive same.

Section 2 of the Act of the Legislature (P. 38) distinctly provides that the power of licensing shall be in the Board of Aldermen, Township Committee, or other governing body. It will be seen that the legislature was silent with regard to giving the power to the mayor, but distinctly placed it (in the case of the City of Paterson) with the Board of Aldermen only.

Under the ordinance as passed by the Board of Aldermen of the City of Paterson, that body

would be helpless to grant or revoke a license. The mayor would be the one to whom the application would be made; the mayor would be the one to whom the fee for same would be transmitted; and the Mayor would be the power to *grant or refuse said license*.

That such delegation of power is unlawful, seems to be unquestioned. The general rule of law on the subject is thus stated in Cyc. Vol. 28, P. 276:

“More important and difficult is it now to ascertain whether the governing body of the municipality may delegate its powers to another; and if so which powers, and to what extent delegation may be made by the council. It has repeatedly been held that the municipality had no such power of delegation. But it is now the recognized rule that the state may expressly authorize authority the council must itself exercise delegation of certain powers by the corporation. In the absence of such expressed all discretionary powers.”

In support of this general rule numerous cases are cited. In this State, the rule above enunciated has been laid down in the case of *Winants vs. Bayonne*, 44 N. J. Law, P. 114; *State, Danforth, pros., V. City of Paterson*, 5 Vr., P. 163; the *State, John P. Hutchinson et al. v. The City of Trenton*, 42 N. J. Law, P. 72.

The case of *Winants vs. Bayonne* is strictly in point. This was a case in which the charter of the City of Bayonne gave the common council power to pass ordinances upon certain recommendation of freeholders, etc. The court held:

“That application for licenses must be made to the common council, and the propriety of granting a license must be passed upon by the common council, and that the power to license could not be delegated by ordinance to the Mayor or anyone else.”

“That an ordinance authorizing the Mayor, upon recommendation of the common council, to issue a permit for the sale of ale, beer and other malt beverages, at picnics, or social gatherings, for a license fee, was illegal and void.”

It seems to counsel that this case is strictly in point. In the case at bar, a delegation by common council was to the Mayor, although the authority was given to the common council only by the legislature. In the Winants case the common council in a measure also designated the discretionary power to the Mayor.

Judge Depue in his opinion said after quoting the legislative act:

“By force of this legislation, the power to license is conferred on the common council. It may pass ordinances regulating the mode in which the common council shall administer its powers, but each individual applicant must make his application to that body with such a recommendation as is prescribed by the act of 1874, and the propriety of granting the license must be passed upon by the common council. It cannot, by ordinance, delegate the power to the Mayor or anyone else.” (P. 116).

In the Danforth case the court held:

“Where judgment and discretion are required of municipal officers, they cannot be delegated without express legislative authority.” (5 Vr. P. 163).

In this case the Board of Aldermen of the City of Paterson were by their charter authorized to purchase a site for a public market, and to employ suitable persons to accomplish the purposes. It was further provided that they had the power to appoint commissioners to carry out the purposes. The board did appoint three commissioners to purchase the site for the market thereon, and the court held, that this was in excess of the powers of the Board of Aldermen, as under the legislative grant the Board of Aldermen should have purchased the site, etc.

The opinion in this case by Judge Scudder is a lengthy one, and the court is respectfully referred to this opinion in full.

Justice Scudder, however, in that case at P. 168 said, that the Board of Aldermen were required to use judgment and discretion in determining the suitability of the site for the market, the employment of the architect, engineer, etc. “This they must use, and cannot delegate to others without express legislative authority. *Lyon vs. Jerome*, 26 Wend. 485; *New York v. City of New York*, 3 Duer 119, 101.”

In the Hutchinson case, the court approved of the rule in the Danforth case, and it was expressly stated in the opinion, that nothing but ministerial acts may be delegated. (13 Vr. P. 72).

In the case of *Rutgers College vs. The City of New Brunswick*, 55 N. J. Law, P. 282, 26 At. Rep.

P. 87, Justice Magie incidentally referred to this principle of law as follows:

“Prosecutor appeals to the settled doctrine that powers thus conferred to be exercised according to the judgment and discretion of a counsel cannot be delegated by it to others, to be exercised according to their judgment and discretion.” (Dill. Mun. Corp. 96; Cooley Const. Lim., 204; Laundry Ordinance Case, 7 Sawy. 526, 13; Fed. Rep. 229; Parker v. New Brunswick, 30 N. J. Law, 395; Dansforth v. Paterson, 34 N. J. Law, 163; Hutchinson v. Trenton, 42 N. J. Law, 72; Winants v. Bayonne, 44 N. J. Law, 114; Volk v. Newark, 47 N. J. Law)”.

Lastly, we would refer the court to the case of Volk v. Newark, 47 N. J. Law, page 117, in which the court approved of the rule laid down in the case of Winants v. Bayonne, at page 123 of the opinion. In that case it was the question of a removal of a police officer. The power was in the common council of the city, and an attempt was made to delegate it to the Mayor by ordinance.

POINT V.

Because the penalty prescribed for the violation of said ordinance is unlawful, and not within the statute authorizing the passage of the ordinance.

The ordinance prescribed that the violation of the same would be punishable by a fine of \$25.00 (P. 16). Under this provision there would be no discretion whatsoever lodged in the magistrate

before whom the case would be heard, he would have to impose a fine of \$25.00 and nothing else.

Under the Act of the Legislature above referred to, by section 4, it is provided that the governing body passing the ordinance shall prescribe a maximum penalty or penalties either by imprisonment in the county jail, not exceeding thirty days, or a fine not exceeding \$500.00, or both, and that the police magistrate "shall have discretion" in imposing such penalty or penalties, but not to exceed the maximum penalty or penalties prescribed in the ordinance.

The fatal defect in the ordinance may at once be seen by comparing it with the legislative enactment. There is no provision for an imprisonment in lieu of fine. There is no minimum fine or maximum term of imprisonment, nor is there any maximum fine or maximum term of imprisonment by which the magistrate "shall have discretion."

POINT VI.

The ordinance is confiscatory and therefore unreasonable.

The Supreme Court deals very briefly in its opinion with this point. We quote:

"The ordinance is not unreasonable because of its incidental effect upon the business in which the prosecutor is lawfully engaged, hence the fact that the sale of liquors and the receipts of rent for the dance hall fell off after the ordinance went into effect does not render it confiscatory in any legal sense."

The Supreme Court again advanced no reason in support of the assertion that the charge was incidental to the sale of liquors. The fact however, is as can be seen from reading of the testimony of Mr. Koettgen, that in order to prevent access from the places where intoxicating liquors are sold to the dance hall, necessitated in each case new constructions with reference to fire escapes, arreaways, etc., it was impossible to comply with the Fire Ordinance and at the same time comply with the Dance Ordinance of the City of Paterson. Hence, automatically these dance halls had to close down.

We discussed this whole point before the Supreme Court and beg leave in turn to present same to this Court.

The evidence in this case clearly shows with regard to all of the Prosecutors that they had built halls especially for dancing, at a large outlay of money, and that as a result of the dance ordinance, the use of these halls for the purpose of dancing, would be either destroyed, or greatly restricted.

The evidence in support of the Prosecutor, The Riverside Turn Verein Harmonie, a corporation, appears in the State of Case, beginning at page 21.

The witness, Edward Durst, testified that he was the financial secretary of the Turn Verein and a member of the organization, which is incorporated under the laws of this State. This organization owns a piece of property from No. 737 to 743 River Street, Paterson, upon which is erected a hall used by the society for its athletic exercises. In front of the hall was a saloon owned by the corporation. Over the saloon was a janitor's rooms and back of the hall was a refreshment room. Both the saloon and the refreshment room

opened directly upon the hall, (P. 21). The hall was located in the Riverside section of the City of Paterson, which was largely composed of people of German nationality or German descent, and the organization itself, The Turn Verein, was composed almost exclusively of Germans, (P. 22, lines 1 to 10). The hall was rented by the society for dancing purposes, and the rental received was thirty-five dollars for each renting of the hall. Under this ordinance it appeared that they would be obliged to completely shut off the saloon and refreshment room, and in which event, in his opinion they would not be able to rent out their hall. He explained that outside of the dues of the members of the society, the only income the society had was from the saloon and the renting of the hall. The society had invested \$32,000, (P. 23, lines 1 to 10)

Before the dance hall ordinance went into effect they rented the hall on an average of fifty times a year, which at thirty-five dollars would amount to \$1,750. After the ordinance went into effect till the writ was granted, a period of four months, the hall was not rented once, (P. 23, lines 8 to 15).

The description the witness gave of the building must clearly show to the court that it could not be used under the present ordinance.

The seriousness of the ordinance with regard to this prosecutor, is that there is a mortgage of eight thousand dollars upon the property, the interest of which, the insurance and taxes, could not be met by the ordinary income of the society, (P. 23). This building had been used in the manner described by the witness since 1906. In the opinion of the witness, the rental value of the hall was almost completely destroyed by the passage of the ordinance, (P. 24. lines 1 to 10).

The witness on re-direct examination, testified that no application had been made under the new dance hall ordinance because of the certain knowledge on the part of witness that they could not comply with the requirements of the ordinance. On cross examination, he testified if any change could be made, it could only be done at a great expense, (P. 25, lines 5 to 10), and that in his opinion that after these changes were made, that the type of people who frequent the hall, would not come there if they could not obtain drink and refreshments, (P. 25, lines 10 to 20). There had never been any complaint made against this hall in the manner in which it was conducted, (P. 25, line 30).

In behalf of the Prosecutor, William J. Duffy, George Arold testified that he was the owner of Arold's hall, the property erected at from 997 to 1001 Main Street, Paterson. This being the property rented by him to Mr. Duffy. The building covering three city lots was a brick building, two stories in height, one part used as a hall occupied two-thirds of the frontage, extending to the rear, and the third part was occupied by Duffy for saloon and restaurant purposes, (P. 28), and this part in turn, was divided in two parts, the front part being the saloon and the rear part a refreshment room or restaurant. Access from Mr. Duffy's saloon and refreshment room to the hall was obtained by four doors running along the South side of the hall. The place represented an investment of \$20,000 by Mr. Arold. The entire premises were rented by him to the Paterson Brewing and Malt-ing Company at the rental of \$1,700 a year, and was by the company sublet to Mr. Duffy, (P. 29). Under this ordinance it would be necessary to shut off all communication between the hall and the

part occupied by Mr. Duffy for saloon and refreshment room and, in the opinion of Mr. Arold, would reduce the rental value about one-half as the public wanting any liquor or refreshments would be obliged to go out on the street, in which event, persons owning saloons in the neighborhood would be able to compete on even terms with Mr. Duffy, aside from the annoyance and discomfort of going outside in inclement weather.

Mr. Arold testified that he had been notified that the lease would not be renewed beyond the present term if the dance hall ordinance remained in effect, (P. 29, lines 30 to 35). The changes that would be required, in addition to shutting up the doors, which could be done only after considerable expense, as they would have to be all sealed up, under the ordinance. This would not be the only difficulty. Mr. Arold testified that it would be impossible for him to build fire exits as required by the fire ordinance of Paterson, made necessary by the closing of the doors, and for that reason he would be unable to use his hall. This would be a very serious difficulty, one that no expenditure of money could overcome, (P. 30, lines 15 to 20); (P. 31, lines 1 to 10).

William J. Duffy, the prosecutor, followed Mr. Arold and his testimony was in general to the same effect. He testified that following the passage of the dance hall ordinance that the rental of his hall had fallen off more than one-half, (P. 32 lines 10 to 20). He said that his rental was one hundred and forty-five dollars a month, but that if the dance hall ordinance was in force, if the hall could be used at all, it would not be worth more than seventy dollars a month, (P. 32, lines 30 to 40). That he would not hire the hall more than

ten times a year under the new ordinance, (P. 32, lines 30 to 40).

In the support of the application of Wilhemenia Koettegen, Wilhemenia Koettegen, the prosecutor was produced as a witness. She testified that she owned the property known as Helvetia Hall, at 54 and 56 Van Houten Street, Paterson, a plot of land fifty by one hundred feet, upon which is erected a four story building used for various purposes as described by the witness at pages 37 and 38 of her testimony. The total investment represented is \$50,000, (P. 38, line 10). Part of the property was rented by her to a corporation known as the Charles Krutten Company, the hall. This was rented for the sum of two hundred and twenty-five dollars a month. The hall was about forty-five by one hundred feet and one of the largest of halls in the city. It was used a great deal for dances and wedding parties. The hall was mostly used by foreigners, (P. 39, lines 10 to 30). That if they were to comply with the dance ordinance and close up a doorway which connected with a hallway, which hallway in turn connected with the saloon, it would be absolutely impossible to comply with the fire ordinance of the City of Paterson, and therefore, they would have to close the hall, (P. 40, lines 5 to 25). The lessee thereby would lose the entire profit which comes from the renting of the hall, which is about one hundred and twenty-five or one hundred and fifty times a year, (P. 40, lines 10 to 30). She testified on cross examination that the dance hall inspector had said that if she would close up the exits above referred to, she could have a license, but that would not be in compliance with the fire ordinance, (P. 40, lines 25 to 35).

The serious part of this case, although the dance hall inspector had told her that the closing up of these exits would satisfy him, yet when an application was made for a license to the Mayor, and the money deposited, a license was refused, not because of the failure to comply with the ordinance, but because of the fact that the Mayor did not approve of her husband, one of the members of the Charles Krutten Company, (P. 44). This appears more in detail by the testimony of Frederick Koettegen, which next follows.

Frederick Koettegen testified that the changes demanded would require him to close up the fire exits, (P. 46, lines 20 to 30), and that it would be impossible for him to make other exits as his building covered the entire plot of land. He had in the meantime applied for a license to run a dance hall and according to his testimony, the Mayor had refused, under any circumstances to grant a license to him personally, or to any person having any connection with him, and that no matter how he would comply with the ordinance, he could not have a license, (P. 47, lines 5 to 20). Mr. Koettegen testified that the net loss in four months, by reason of the enforcement of the dance hall ordinance, was one thousand dollars from the hall rental, (P. 47). That it also did great injury to the liquor business, as the hall was mainly used by people of foreign birth, (P. 48, lines 1 to 10). He testified that the amount invested in the property is \$50,000, (P. 48). He also testified on cross examination that he had been unable to hire out the hall for banquets and wedding parties, and gave the reasons why, (P. 49).

The evidence of all these witnesses is brief and to the point, and the court is asked to carefully

read the entire testimony of these witnesses. From such reading it will clearly appear, that the enforcement of this ordinance, would in effect be a confiscation or destruction of the value of the properties to the extent of many thousand dollars. The Turn Verein Harmonie Company will be completely ruined. The rental value of Mr. Arold's hall, occupied by the Prosecutor, Duffy, will be reduced at least one-half. The property of Mrs. Koettegen—Helvetia Hall, as appears from the testimony, under this ordinance, the Mayor is exercising the judicial function which should have been used by the Board of Aldermen, would not under any circumstances grant a license for the place. That even if a license was granted it would be impossible to comply with this ordinance because of the closing up of the fire exits.

It clearly appears that even if changes could be made, these places would involve a large expenditure of money. Yet no provisions were made to cover these cases in the ordinance, and every one of these places were substantial buildings, in existence for years before the dance hall ordinance was ever thought of. To apply therefore the ordinance in cases like these of the Prosecutors, is an unfair exercise of the police power. That it is, in effect, confiscation. We refer to the court briefly a number of cases on the point in *Cyc. Vol. 8, at page 1112. Note 57 citing: Commonwealth v. Murphy, 10 Gray, Mass. 1.; People v. Toynbee 2 Park. Crim. (N. Y., p. 329); Wynehammer v. People 13 N. Y. 378); State v. Walruff, 26 Fed. Rep. 178.*

We particularly refer to the court the case of *Wynehammer v. People, 13 N. Y., p. 378*, where the question is discussed in a very lengthy and able opinion.

See also Holt v. Excise Commission, 31 How. P. R. (N. Y. 334).

We contend further that even if the dance hall ordinance could be complied with by making certain changes, and if these changes involved the expenditure of large sums of money in order to adapt buildings erected for years to comply with this new ordinance, then to the extent of such increased expenditure the ordinance is confiscatory. It is indeed a strange position to take that municipal authorities may over night, pass an ordinance at their own whim, the effect of which is to compel a man to close his place of business.

Supposing for the sake of argument this case can comply with this new ordinance, and having spent thousands of dollars, as testified it would be necessary to in order to meet the new requirements, does it follow then that a succeeding Board of Aldermen may pass a new ordinance requiring still further changes? They might insist upon the ripping out of all the work required to have been done under the previous ordinance. There must be, it seems to counsel, some limit, and that limit must be based upon reason.

POINT VII.

The ordinance is unreasonable with regard to the hours within which dancing may be had.

Under the ordinance dancing may not be held between the hours of one and seven o'clock; as a matter of fact few dances ever held terminate at 1 o'clock. Many of our great social dances do not begin until 10:00 o'clock or after, and last until 2:00 or 3:00 o'clock in the morning and later. The effect of the passage of this ordinance would be

unreasonable deprivation of the use of the property by the owner, and would be unreasonable deprivation of the right of the public in the pursuit of enjoyment.

Aside from this, the act empowering the passage of this ordinance is absolutely silent on the question, and in a case like this where the effect of the ordinance is to restrict the public in their pleasure, and in the free use of their time, and in the reasonable use by a dance hall owner of his property, the powers set forth in the ordinance should not be justified by implication, but only by expressed legislative grant.

POINT VIII.

The prosecutors had a right to prosecute the writ.

This point deals with the contention of counsel for the defendant, which was supported by the Supreme Court in its opinion, that inasmuch as there was no arrest and conviction of the prosecutors by the city authorities, for the violation of the ordinance, that therefore they are in no position to prosecute the writ of certiorari. The Supreme Court in its opinion cited the case of *Rosencrans v. Eatontown*, 80 N. J. Law, p. 227. Counsel insists that an examination of this case will support the prosecutor's right to institute certiorari proceedings without awaiting a conviction. In that case, the Town of Eaton adopted an ordinance requiring a license fee of \$100.00 to carry on the business of bill-posting, and provided that any person carrying on such business without obtaining such license should be fined or imprisoned. It will thus be seen that the ordinance was pre

cisely the same in turn as the ordinance in consideration. The prosecutor Rosencrans, sued out a writ of certiorari without waiting to be arrested and convicted, and counsel for the defendant raised the same point as is now raised by counsel for the defendant in the case at bar. The Supreme Court in that case held:

“Where a prosecutor has a direct interest in setting aside a municipal ordinance if any of the reasons for so adjudicating are valid, and at the same time is a cause for which the court will vacate the ordinance in toto, the court may adjudge it to be void before any action to enforce it has been begun.”

Said Justice Voorhees:

“The prosecutor is possessed of property in the township adapted for this business only, which will be depleted in value and rendered useless in that locality if the ordinance stands and is enforced. In this regard this case may be distinguished from *Kendall Manufacturing Co. v. Jersey City* 36 vroom 123. I do not understand that *Unger v. Fanwood*, 40 Id. 548, is to the contrary. That case brought under review an ordinance regulating the speed of automobiles, and until the violator of the ordinance was convicted, he clearly had no right to test its validity, for he was not subject to its ban until there had been a violation of its provisions, but in the case in hand, the prosecutor must stop his business or pay

the license fee demanded. If the ordinance is wholly without warrant of law and illegal, there is no middle ground for the assertion that it may be reasonable under certain other circumstances, as appeared by the facts in the case cited as authority for holding that the writ was prematurely allowed."

"Therefore, the pith of the principle, as enunciated by Mr. Justice Garrison in the Hamblet case, that 'conviction alone can furnish evidence that the ordinance effected the prosecutor,' cannot be said to apply in the present instance, a distinction pointed out by the same learned justice in *Central Railroad Co. v. Elizabeth*, 41 vroom 578."

Throughout our entire argument we have contended that this ordinance is void in toto. If, as alleged in our first, third and fifth points, the Board of Aldermen had no power to pass the ordinance, it is of course void in toto. If, as contended in our second point, the license fee is excessive, then we appeal to the case cited under that point where the court set aside the whole fee on precisely that ground, such license fee being the matters of ascertaining whether or not such licensing act was a police regulation or not. If it was not a police regulation, then the Board of Aldermen had no power to pass it, and it was therefore, void in toto. If the ordinance as contended under our sixth point confiscates the property of the prosecutors, likewise the ordinance is void in toto.

It is respectfully submitted, therefore, that there is no virtue in the contention raised by counsel for the defendant.

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MMP

New Jersey Court of Errors and Appeals

149
WILHELMINA KOETTEGEN,
Prosecutor-Appellant,

vs.

CITY OF PATERSON,
Defendant-Respondent.

On Certiorari.

147
WILLIAM J. DUFFY,
Prosecutor-Appellant,

vs.

CITY OF PATERSON,
Defendant-Respondent.

On Certiorari.

150
CHARLES KRUCHEN COMPANY,
a corporation,
Prosecutor-Appellant,

vs.

CITY OF PATERSON,
Defendant-Respondent.

On Certiorari.

148
RIVERSIDE TURN-VEREIN HAR-
MONIE, a corporation,
Prosecutor-Appellant,

vs.

CITY OF PATERSON,
Defendant-Respondent.

On Certiorari.

BRIEF FOR DEFENDANT-RESPONDENT.

Statement of Case.

The writs in these proceedings bring up for review an ordinance passed by the Paterson Board

of Aldermen to license and regulate the public dance halls of that city.

No conviction of anyone under the ordinance is shown.

The power to enact the ordinance in question was given to the Board of Aldermen by the 26th Section of the City Charter (*P. L.* 1871, p. 808), which provides:

“The Board of Aldermen * * * shall have power within the said city to make, establish, publish, modify, amend and repeal ordinances, resolutions, rules, regulations and by-laws, in the matters and for the purposes following, in addition to other matters elsewhere specially granted, viz.:

* * * * *

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

* * * * *

XVI. In relation to public shows, exhibitions and places of public amusement, the licensing and prohibiting thereof.”

A statute of 1913 (*P. L.*, p. 38) provides for the regulation of dance halls and the imposing of a license fee for revenue. This statute is not broad enough to cover all the provisions of the ordinance under review, which as a whole can only be supported by the charter provisions above set out.

In *Loertscher v. Jersey City*, 55 *Vroom*, 537, it was said:

“That the licensing and regulation of places of this kind, and supervision of the

dances held therein, are advisable, if not necessary, may be freely conceded."

That the attempt to regulate the public dance halls of Paterson was prompted by conditions requiring such regulation appears in the state of the case.

Frederick Koettegen, whose wife is one of the prosecutors in this cause, was indicted and convicted for the manner in which he conducted a dance hall (Case, pp. 42-50). The Koettegens attempted to get a license under the ordinance in question and were refused by the Mayor. That there was a considerable public demand for the passage of this ordinance is shown by the representative citizens of Paterson who appeared before the Board of Aldermen and advocated its passage (Case, p. 9).

The ordinance provides for the licensing of and a system of inspection of all public dance halls in the city. The power to grant licenses is vested in the Mayor, who can only act upon the report of one of two inspectors appointed by him that the place for which a license is asked complies with the laws and municipal regulations relating thereto. The part of the ordinance which seems to cause the most objection on the part of the prosecutors is contained in Section 4, which provides that no intoxicating liquor may be sold or given away in any public dance hall, or in any room connecting with said hall.

There were four witnesses called by the prosecutors, and each of them said that this clause was the part of the ordinance to which they most strongly objected. They seemed to feel that they could not operate a dance hall unless they were permitted to sell intoxicating liquor in the hall or in some room adjacent to the hall.

But this clause rests not only upon the powers of the Board of Aldermen under the provisions of the charter above quoted, but under the general powers of the Board of Aldermen to regulate the sale of intoxicating liquor.

The ordinance provides for a license fee of \$40 per annum for each dance hall.

There are about twenty-one dance halls in the City of Paterson (*Menton*, p. 67, l. 8). The fees would, therefore, amount to about \$840 per year. Before the present proceedings were commenced only nine applications for licenses had been made (*Menton*, Case, p. 66). There are fifteen other places in Paterson where dances might be held in addition to the public dance halls. There is no reason to assume that these fifteen places would pay the license fee.

The fees which the city will receive for licenses will not in all probability equal the cost of inspection. The inspectors were being paid at the rate of \$500 per year each when the testimony was taken. This payment was made by a private association.

The Board of Finance appropriated \$170 for the salaries of these inspectors. This appropriation was for the balance of the fiscal year in which the ordinance took effect, and was at the rate of \$1,000 per year (*Brophy*, pp. 62-63). The inspectors had not been placed upon the payroll at the time of the issuance of the writs of certiorari. Such inspection was necessary, and the salaries of \$500 each to the inspectors was a reasonable allowance. It will be seen, therefore, that the \$40 annual license fee will not pay the cost of inspection. Under the ordinance in force before the one now under review, the practice was to charge a fee of \$1 for each night. This produced the sum of \$575 per year (*Brennan*, p. 56).

POINT I.

Reasons that do not go to the invalidity of the whole ordinance under review cannot be considered in these proceedings.

None of the prosecutors in these proceedings have been convicted for violating the ordinance now under review. Conceding that each of them has property which will be lessened in value if the ordinance stands and is enforced, and that they may, therefore, be permitted to attack the ordinance before any attempt is made to enforce it against them, yet such attack at this time can only be made by them upon the ground that the ordinance is wholly void.

In *Rosecrans v. Eatontown*, 51 *Vroom*, 227, certiorari was allowed to review an ordinance licensing billposting. The prosecutor owned a number of billboards in the borough. A motion was made to vacate the writ as improvidently granted, based on the fact that no proceedings had been actually instituted against the prosecutor under the ordinance, but merely a notice had been given to him from the public authorities calling his attention to the fact that the license fee must be paid.

The Court stated the rule to be applied as follows:

“It seems to me therefore that the prosecutor has a direct interest in setting aside the ordinance, and if any of the reasons for so adjudicating are valid, and, at the same time, is a cause for which the court will vacate the ordinance *in toto* the court may adjudge it void before any action to enforce it has been begun.”

Rosecrans v. Eatontown, 51 *Vr.*, at 232.

The Court considered the reasons, but found no sound one that affected the validity of the whole ordinance, and it, therefore, dismissed the writ. The rule has since been followed, as will appear from the following quotations from opinions of the Supreme Court :

“The return to the writ which removes the proceedings of the township committee, relating to the passage of the ordinance, shows no conviction or proceedings to enforce the ordinance against the prosecutor. No irregularities in its passage have been pointed out. Under the authority of *Rosencrans v. Eatontown*, 51 Vr., 227, the ordinance can be adjudged void, before conviction and before action to enforce it has terminated in a judgment, only where it appears to be void *in toto*. The reasons assigned do not present a case of that breadth. The ordinance must stand as against this writ, which will be dismissed.”

Sciliano v. Neptune, 54 Vr., at 160.

“Finally it is argued that the ordinance should be set aside as unreasonable.

This should not be done unless the ordinance is unreasonable *in toto*. The presumption is that it is reasonable and the burden of proving it otherwise is on the prosecutor; if reasonable in part, it will not be set aside, but be permitted to stand, leaving open the reasonableness of its operation to particular cases. *Pennsylvania Railroad v. Jersey City*, 18 Vroom, 286; *Hamblet v. Asbury Park*, 32 *id.*, 502; *North Jersey Street Railway v. Jersey City*, 46 *id.*, 349, where the cases are collected.

From our examination of the ordinance, and the proof in the case, we are unable to say that the ordinance is unreasonable in all cases. It follows that the present writ should be dismissed, the prosecutor left to test the reasonable or unreasonable operation of the ordinance as to himself by reviewing a conviction in proceedings to enforce it against him. *Hamblet v. Asbury Park, ubi supra.*"

Neuman v. Hoboken, 53 Vr., at 278.

We submit that if the whole scheme of licensing dance halls as provided by the ordinance under review is invalid because of lack of power in the Board of Aldermen or by reason of the improper exercise by said Board in this ordinance of any such power it may have, yet there are provisions in the ordinance which are separable from the licensing feature and which the Board of Aldermen of Paterson had power to ordain and which it validly exercised.

We instance Section 4 of the ordinance, which provides:

"No intoxicating liquor shall be sold, served or given away in any public dance hall, as heretofore defined, or in which dancing is advertised to be taught, or in which classes in dancing are advertised to be maintained, or in which instruction in dancing is given for hire; or any room connecting with such hall."

This section applies both to dance halls required to be licensed and those not required to be. This may be considered as a provision regulating the sale of intoxicating liquor, a matter over which the

power of the Legislature or of a municipality under authority from the Legislature is practically limitless.

Meehan v. Excise Commissioners, 44 Vr.,
382.

Power to regulate the sale of intoxicating liquor is given to the Paterson Board of Aldermen by the 26th Section of the City Charter (*P. L.* 1871, p. 808).

The inspection of dance halls may be carried on under this ordinance as a feature separate from the licensing of the halls.

The penalty imposed by the ordinance is a fine of \$25. The Board of Aldermen are empowered by the charter to impose any fine not exceeding \$50, so that this penalty is within their power.

The provision for the revocation of the license is separable from this provision for fine, so that eliminating all the licensing features there is a substantial part of the ordinance left with a proper penalty for disobedience.

The Supreme Court has held:

“An ordinance prescribing alternative penalties, one of which is not authorized by the statute on which it is based, will not be set aside *in toto* in advance of imposition of the unlawful penalty; the latter being separable.”

Shill Rolling Chair Co. v. Atlantic City,
94 *Atlantic*, 314.

POINT II.

The ordinance under review was passed by the Paterson Board of Aldermen by virtue of express authority conferred on said Board by the Legislature of New Jersey.

The power to license and regulate dance halls in the City of Paterson is given to the Board of Aldermen by

- A. The Charter, City of Paterson, Section 26.
(*P. L.* 1871, p. 808.)
- B. *P. L.* 1913, page 38.

The charter gives the Board of Aldermen power to enact ordinances:

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

“XVI. In relation to public shows, exhibitions and places of public amusement, the licensing and prohibiting thereof;”

“Places of amusement include not only theaters, music halls and the like, but dance halls, places where horse racing is held, and in addition to these generally all places where exhibitions are given of a theatrical nature.”

38 Cyc., 254.

Com. v. Quinn, 164 *Mass.*, 11.

Pearson v. Seattle, 14 *Wash.*, 438.

Section 2 of the *P. L.* 1913, page 38, provides:

“It shall be lawful for the common council, the board of aldermen, township committee or other governing body, however designated, of any city, township, incorporated town, incorporated borough or incorporated village within this State to pass, alter and repeal ordinances for licensing public dance halls, and to adopt such rules, regulations and restrictions with reference to the conduct of all such public dance halls as to it shall seem proper.”

Section 1 defines the term “public dance hall” as follows:

“The words ‘public dance hall’ in this act shall be taken to mean:

Any room, place or space in which dancing is carried on and to which admission can be had either with or without the payment of a fee, or by the purchase, possession or presentation of a ticket or token, or in which a charge is made for caring for clothing or other property, located upon premises which are licensed to sell liquors, other than a hotel having upwards of fifty bedrooms.

But the word ‘dancing’ as used in this act shall not apply to exhibitions or performances in which the persons paying for admission do not participate.”

It is perhaps a question whether the act is confined to public dance halls on premises licensed to sell intoxicating liquors. Section 1 of the act defines public dance halls as “Any room, place or space in which dancing is carried on * * * or other property located upon premises which are licensed to sell liquors, etc.” This clause in the

act can be construed as applying to dance halls, generally, but if there is any question about this, and if this sentence means practically to limit the act to those dance halls on premises licensed to sell intoxicating liquors, the City Charter gives a broader power to the Board of Aldermen.

POINT III.

The fee charge cannot be attacked as a police regulation because the Act says it may be levied for the purpose of revenue.

Section 3 of the act reads as follows:

“3. It shall be lawful for said common council, board of aldermen, township committee and other governing bodies, however designated, of any city, township, incorporated town, incorporated borough or incorporated village, to provide in any such ordinance or for the exaction, from any person licensed thereunder, of an annual license fee, which said license fee may be levied and collected *for the purpose of revenue.*”

Case of *North Hudson County Railway v. Hoboken*, 41 *N. J. L.*, page 71, says as follows:

“A municipal corporation has no power to require a horse railway company, having its rails down and in use, under the act incorporating it, to take out a license and pay a license fee as a means of taxation, unless power is given to the city to resort to licenses and license fees for revenue purposes.

The distinction between the power to license as a police regulation and the same

power as a revenue measure is of the utmost importance. If granted with a view to revenue, the amount of the tax, if not limited by the charter, is in the discretion and judgment of the municipal authorities."

The case of *Shackelton v. The Board of Councilmen of Guttenberg, in the County of Hudson*, 29 *N. J. L.*, page 660, sets forth :

"Every lawful tax rests upon legislative enactment, and when subordinate bodies seek to impose such a burden upon the citizens, they must show a clear and unmistakable authority so to do, derived from the expressed words or necessary implication of a statute."

POINT III-A.

The fee charged in these cases, however, can be justified as a police regulation.

The charter covers a broader field than the Act of 1913. This act certainly did not repeal the whole section of the Paterson Charter relating to the licensing of places of public amusement. Being a general act, it did affect the charter to some extent.

We contend that it only affects the charter to the extent of the field covered by the act, that is, that the power of the Board of Aldermen to regulate all public dance halls included in the definition in the statute of 1913 must flow from that act; but the power to regulate other public dance halls and places of amusement still flows from the charter. But the Board of Aldermen still has the power to regulate all kinds of dance halls.

The evidence shows that the probable receipts from license fees under the ordinance will be about \$840 per annum and the cost of inspection alone will be \$1,000 per annum.

The ordinance provides for two inspectors. They had not been paid by the city up to the time of the allowance of the writs of certiorari. No reason appears in the evidence why they had not been paid. The Board of Finance made an appropriation for their salaries, but the Board of Aldermen did not place their names on the payroll. Reasons for such a deadlock may easily be surmised by anyone familiar with municipal politics. That such a deadlock will not last long is certain, and that the inspectors will receive their back pay is to be expected.

Instances of a city neglecting to pay in the end for services rendered are extremely rare. The probabilities are that the city will be obliged to pay much more than \$1,000 per year for inspection under this ordinance.

There are a number of cases in New Jersey in which license fees have been declared excessive. But these are all cases where an attempt was made to impose a fee upon the exercise of a useful trade or occupation.

In *North Hudson Railway Company v. Hoboken*, 12 Vr., page 71, an attempt was made to impose an annual license upon street cars; in *Muhlenbrinck v. Commissions*, 13 Vroom, page 364, an attempt was made to impose a license fee upon peddlers; in *Kip v. Paterson*, 26 N. J. Law, 298, an attempt was made to impose a license fee on farmers selling produce in the city; in *Gaynor v. Rolls*, 79 N. J. L., page 402, a license fee was imposed on billboards.

We find no case in which a license fee has been set aside as excessive where the same was imposed upon the conducting of a place of public amusement.

That a higher license fee will be sustained where it is imposed for the licensing of amusements than upon a useful trade is pointed out in *Unwin v. State*, 44 *Vroom*, 529. In that case an attack was made upon a statute imposing a license fee of \$1 on motor vehicles.

The above case was affirmed for the reason given in the Supreme Court (46 *Vroom*, p. 500).

Professor Dillon points out the distinction between the regulation of useful trades as distinguished from amusements:

“Concerning useful trades and employments, a distinction is to be observed between the power to ‘license’ and the power to ‘tax.’ In such cases the former right, unless such appears to have been the legislative intent, does not give the authority to prohibit, or to use the license as a mode of taxation with a view to revenue, but a reasonable fee for license and the labor attending its issue may be charged. Respecting amusements, exhibitions, etc., the authority of the corporation under the power to license has been regarded as greater than when the same word is employed as to trades and occupations.”

Dillon on Municipal Corporation, 5th Ed., par. 661.

That a municipality has greater power in the regulation of amusements than of useful trades must be conceded. The Legislature may delegate power to prohibit amusements. It has done so in the Paterson Charter. Such delegation of power is constitutional.

“The legislature may, subject to constitutional limitations, delegate to a municipal corporation the power to regulate, license,

tax, restrain, or prohibit exhibitions, shows, theatres, and other places of amusement.”

38 *Cyc.*, p. 257.

In some instances where license fees have been set aside as excessive, the ordinance provided no system of inspection or regulation beyond the mere issuance of a license.

POINT IV.

The penalty imposed by the ordinance is authorized:

A. *By the Charter.*

Section 5 of the ordinance (Case, p. 16) imposes a penalty of \$25 upon violator of the ordinance.

Section 26 of the City Charter (*P. L.* 1871, p. 808) provides:

“That the Board of Aldermen shall have power to make, continue, modify and repeal such ordinances, regulations and resolutions as may be necessary to carry into effect any and all of the powers vested by law in the corporation, and shall have power to enforce obedience thereto and observance thereof by the imposition of fines not exceeding fifty dollars, or by imprisonment not exceeding thirty days or by both.”

The ordinance vests no discretion in the magistrate as to the amount of the fine.

This is a matter entirely within the control of the Board of Aldermen. At one time it was decided that under such a statute the governing body must

fix the fine to be imposed and the magistrate could be given no discretion in the matter.

Atlantic City v. France, 74 N. J. L., 389.

B. *By Public Laws of 1913*, p. 39.

This act gives the Board of Aldermen power to impose a penalty of imprisonment not exceeding sixty days or a fine not exceeding \$500, or both. The Board of Aldermen is directed to fix the maximum penalty, and it has fixed it at \$25 fine. The act gives the police magistrate discretion in imposing the penalty, but he must not exceed the maximum prescribed in the ordinance. It was not necessary for the ordinance to state that the magistrate had such discretionary power.

POINT V.

The ordinance is not illegal because it delegates to the Mayor discretion to grant or refuse a license to conduct a public dance hall.

The Legislature has given to the Board of Aldermen power to confer on the Mayor discretion to grant or refuse such a license.

A. The statute (*P. L.* 1913, p. 24, Sec. 2) provides as follows:

“It shall be lawful for the common council, board of aldermen, township committee or other governing body, however designated, of any city, township, incorporated town, incorporated borough or incorporated village within this state to pass, alter and repeal ordinances for licensing public dance

halls, and to adopt such rules, regulations and restrictions with reference to the conduct of all such public dance halls as to it shall seem proper."

B. Section 26 of the City Charter (*P. L. 1871*, p. 808) provides:

"Section 26. And be it enacted, That the Board of Aldermen shall have power to make, continue, modify and repeal such ordinances, regulations and resolutions as may be necessary to carry into effect any and all of the powers vested by law in the corporation, and shall have power to enforce obedience thereto and observance thereof by the imposition of fines not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by both; and shall have power within the said city to make, establish, publish, modify, amend and repeal ordinances, resolutions, rules, regulations and by-laws, in the matters and for the purposes following, in addition to other powers elsewhere specially granted, viz.: * * *

II. To prevent vice and immorality, to preserve public peace and good order, to prevent and quell riots, disturbances and disorderly assemblages; * * *

XVI. In relation to public shows, exhibitions and places of public amusement, the licensing and prohibiting thereof."

There is nowhere in the charter or statute any provision which may be construed to mean that it was the intention of the Legislature that licenses for places of public amusement or for "public dance halls" were to be granted by the governing body.

It is conceded that where the Legislature has designated a municipal board as the one to grant licenses, that such power cannot be delegated by such Board to any body or individual.

Such was the decision in *Miner v. Larney*, 87 N. J. L. (2 *Gummere*), 40.

In that case the statute provided the "mayor and common council, or a majority thereof, in council convened, shall have the sole, only and exclusive right and power to grant licenses under the common seal of said city to all and every innkeeper and retailer of spirituous liquors residing in said city, in the like manner and on the same terms and conditions as may now be done by the Court of Common Pleas in this State, except only that they may grant such license for any term not exceeding one year, as they may deem best."

A similar question concerning the right of a municipal board to delegate power to revoke a license was settled in

Lambert v. Rahway (1896 *Sup. Ct.*), 29 *Vr.*, 578.

The Court in that case referred to the authority conferred by the Charter of Rahway and its effect, as follows:

"By the 29th section of an act entitled 'An Act to revise and amend the charter of the City of Rahway,' approved March 23d, 1865 (*P. L.*, p. 499), it is provided 'that the sole and exclusive power to grant licenses to persons to keep inns and taverns within the city shall be vested in the common council and they are authorized to revoke such licenses for cause shown.' This act applies only to inns and taverns, but the act does not, in any part of it, confer any power to revoke licenses upon any other body than the common council."

The Court held:

“The charter specifically provides that the common council is the corporate body upon which the power is conferred to revoke licenses, and this power so conferred excludes jurisdiction by any other body or person to adjudge revocation, either directly or indirectly.”

Ibid, 582.

An earlier decision on the question of the right of a municipal board to delegate power specially conferred on it in

Winants v. Bayonne (1882 *Sup. Ct.*), 15 *Vr.*, 114.

In that case the statute governing the granting of licenses was stated by the Court to be as follows:

“By a supplement to the city charter, passed on the 27th day of March, 1874, subdivision 14 of section 40 was amended by adding the following proviso: ‘And be it enacted, that section 40 of the act to which this is a supplement be, and the same is, hereby amended, by adding to sub-section fourteen in said section the following proviso: “provided, that no license above provided for shall be granted by said board of councilmen, except upon the recommendation, in writing, of the party making application therefor, by at least ten freeholders residing and holding real estate in the city of Bayonne, who shall not have recommended for license any other person who, at the time of the presentation of such recommendation, is awaiting the action of the board of councilmen upon an application for a license, or who is licensed by said board.” ’ ’ ’

And it was held :

“By force of this legislation, the power to license is conferred on the common council. It may pass ordinances regulating the mode in which the common council shall administer its powers, but each individual applicant must make his application to that body with such a recommendation as is prescribed by the act of 1874, and the propriety of granting the license must be passed upon by the common council. It cannot, by ordinance, delegate the power to the mayor or anyone else.”

In the above cases it expressly appeared that it was the will of the Legislature that the power conferred was to be exercised by a particular board.

The question of the right of a municipal board to delegate power has come up in numerous cases relating to the fixing of penalties for the violation of ordinances.

Such a question was raised in

Atlantic City v. France, 74 N. J. L., 389,

and the Court said :

“The insistence is that the ordinance should have fixed the penalty and not left anything to the discretion of the magistrate. In support of this position the cases of *Young & McShea v. Atlantic City*, 31 Vroom, 125, and *Lambertville v. Applegate*, 44 Vroom, were cited. But as was pointed out by Justice DIXON in the first of these cases, it is not a question of power in the legislature to confer upon the common council the right to provide that the amount of the

penalty shall be left to the discretion of the magistrate, but the question is whether the legislature has done so."

Neither the language of the statute or charter imports an intention on the part of the Legislature that the Board of Aldermen only was to grant licenses to places of public amusement, but that the intention was to give the Board of Aldermen full power to legislate on the subject.

In *Gregory v. Bridgeport*, 41 *Conn.*, 463, it was decided that the common council could delegate discretionary powers to a superintendent of wharves where the charter gave the common council power to "ordain by-laws relating to wharves and the anchoring, moving and mooring of vessels."

In *Buck v. Douglass*, 74 *N. J. L.*, page 300, under a statute which gave a township committee the power to pass ordinances for licensing peddlers, it was held that the committee might depute the issuance of the license to any officer.

The Court said :

"The next objection is that the committee had no power to issue licenses except upon a resolution adopted by the committee in each case licensing each applicant. The power to license being fixed and the fee fixed, the act of issuing the license is a purely ministerial act, and any officer may be deputized to issue it in accordance with the terms of the license. This is the universal practice in all municipalities and is lawful."

It may be that under the ordinance in the above case the officer issuing the license had no discretion-

any power, but was compelled to issue it to every person who applied for a license and paid the fee. But in the case of *Harcourt v. Asbury Park*, 33 Vr., 158, an ordinance of Asbury Park provided:

“ * * * that no person shall deposit any lumber, sand, brick, dirt, stone or other materials in any of the streets and avenues without having obtained from the street committee a permit so to do, which permit, if granted, shall state the conditions or restrictions under which same is granted.”

And the Court said:

“The infirmity ascribed to this ordinance is that it is a delegation to the street committee of the power given by the charter to the common council.

There is no force to this objection. No legislative function is delegated to the street committee; a ministerial duty only is conferred.”

In the case of *Wilson v. Eureka City*, on appeal in United States Supreme Court, reported 173 U. S., 32, it appears that the General Incorporation Act of Utah conferred upon the City Council of Eureka City the following power:

“10. To regulate the use of streets, alleys, avenues, sidewalks, cross walks, parks and public grounds.

11. To prevent and remove obstructions and encroachments upon the same.”

The Council passed an ordinance providing:

“No person shall move any building or frame of any building, into or upon any of

the public streets, &c., or otherwise obstruct the free passage of the streets, without the written permission of the Mayor, or president of the City Council, or in their absence of a councillor."

The defendant requested permission of the Mayor to move a wooden building through the streets and was refused permission. Notwithstanding the refusal, he moved the building and was fined \$25. The State Court upheld the power of the Council to delegate the power to grant or refuse permits. The Supreme Court of the United States did not pass on this point, saying it was a State question.

The following sections of the charter of the City of Paterson contain provisions relating to the exercise of the licensing power:

"Section 28. And be it enacted, That the executive power of the corporation shall be vested in the mayor, and in the departments and city officers hereinafter named. The mayor shall be a member ex officio of all standing committees of the Board of Aldermen."

"Section 31. And be it enacted, That the co-ordinate executive departments shall be as follows: the department of finance, the department of public instruction, the department of streets and sewers, the department of charities and correction, the department of health and the fire department; all of which, except that of public instruction, shall be composed of and (with their respective bureaus) be managed and controlled by the members of the appropriate standing committees of the board of aldermen, and

governed and regulated by the ordinances from time to time adopted by said board.”

“Section 35. And be it enacted, That there shall be the following bureaus in the said department of finance, viz.:

- I. A bureau of assessment of taxes;
- II. A bureau of appeals and revision of taxes;
- III. A bureau of collection;
- IV. A bureau of licenses;
- V. A bureau of auditing and accounts;
- VI. A bureau of disbursements.

* * * * *

IV. Bureau of Licenses.

Section 61. And be it enacted, That the executive officer of the bureau of licenses shall be known as the ‘register of licenses.’

Section 62. And be it enacted, That all licenses granted by virtue of the ordinances of the board of aldermen shall issue from this bureau, bearing its stamp, the signature of the said register, and be countersigned on the face by the comptroller, on the payment of the fees or charges prescribed by such ordinances.

Section 63. And be it enacted, That no such license shall be granted except upon the payment to said register of the fees prescribed therefor by the Board of Aldermen, and every license so granted shall be subject to revocation at any time for such cause and in such manner as the board of aldermen shall from time to time prescribe by ordinance.”

It is plain from Section 63 that the Legislature intended to give the Board of Aldermen full power to legislate on the subject of revocation of licenses; to delegate that power to any officer it might see fit.

POINT VI.

The ordinance is not unreasonable and does not confiscate any property of the prosecutors.

The prosecutors complain of the ordinance because of its effect on three halls:

1. Riverside Turn Hall, owned by the prosecutor Riverside Turn-Verein Harmonie.

2. Arold Hall, held under lease by the prosecutor William J. Duffy.

3. Helvetia Hall, owned by the prosecutor Wilhelmina Koettegen and held under lease by the prosecutor Charles Kruchen Co.

Evidence concerning the Riverside Turn Hall was given by Edmund Durst (Case, pp. 21 to 26).

The witness described the building as follows (Case, p. 21, ll. 20, etc.):

“The building is on two lots; there is a hall; in front of the hall is a saloon, and over the saloon is the janitor’s room, and back of the hall is another cafe room, a sort of refreshment room.”

“Both the refreshment room and the saloon open directly on the hall.”

On cross-examination the witness admitted the real objection of the prosecutor to the ordinance.

“Q. The dance hall would not be used unless there was a convenient place for the dancers to obtain drinks; is that right? A. That is right; yes.”

This was the only witness as to Riverside Turn Hall.

The witnesses called concerning Arold Hall were the landlord, George Arold, and the tenant, William J. Duffy.

Mr. Arold described this property as consisting of three city lots, two of which were covered by the hall and the third by a building in which Mr. Duffy conducted a saloon. There are entrances directly from the saloon into the dance hall, and under the ordinance these must be closed up before a license can be granted to the dance hall.

Mr. Arold said that the closing of these entrances diminished the rental value of the hall and gave as a reason that the patrons of the dance hall would not frequent it unless they could be served with intoxicating liquors (Case, p. 30).

Mr. Duffy complied with the conditions of the dance hall ordinance, applied for a license, and it was granted to him. The result was that the receipts of his saloon fell off so much that he decided not to renew his lease if the ordinance remained in force (Case, pp. 32-33).

Wilhelmina Koettegen and Frederick Koettegen were the only witnesses called to testify concerning Helvetia Hall.

They described the hall as a large building on two city lots with saloon in front and refreshment room in the rear. There are several sleeping rooms on the premises.

Mrs. Koettegen reluctantly admitted her real objection to the dance hall ordinance, as appears from the following portion of her cross-examination (Case, p. 43):

“Q. You mean that the patrons of your hall desire to have liquor served to them?

A. And meals, too. We serve meals.

Q. This ordinance does not prevent you from serving meals? A. No.

Q. But it does prevent you from serving drink in any room connected with the dance hall? A. Yes.

Q. And unless you can do that, you say it will interfere with your business, which is the truth, is it not? A. Yes, that is true.

Q. The patrons of your dance hall desire to be served with drink, and unless they can be served with drink they will not patronize you as much as before? A. No.

Q. That is what affects your business under this ordinance? A. Yes.”

Frederick Koettegen would not admit that the principal objection he had to the ordinance was that it prevented the sale of liquors in the dance hall and rooms connecting therewith. He does say, however, “people do not want to hire the place when the rear is closed up so they cannot have access to the refreshment room” (Case, p. 47, ll. 33, etc.). The only refreshment room that would be shut off under the ordinance would be the one where intoxicating liquors were sold.

Mr. Koettegen was refused a license by the Mayor, who stated to him, according to Mr. Koettegen (Case, p. 47), that no license would be granted by the Mayor for Helvetia Hall so long as Mr. Koettegen was in it.

Mr. Koettegen had theretofore been indicted for keeping a disorderly house at Helvetia Hall. The Supreme Court sustained his conviction: *State v. Koettegen*, 95 *Atlantic*, page 747. The character of the evidence against him is disclosed in the opinion of the Court:

"The plaintiff in error was convicted of keeping a disorderly house. The specific charge was the maintenance of a dance hall, where drunkenness prevailed, foul and vulgar language was used, where prostitutes gathered, and outside of which and nearby fights were frequent."

It will thus be seen that the objection to this ordinance is that it confiscates the property of the prosecutors because it prevents them from selling intoxicating liquors in the dance hall or in rooms connected therewith.

Intoxicating liquors cannot be sold anywhere in this State in less quantities than one quart without a license first had and obtained (*Crimes Act, Sec. 66, Comp. St. 1767*). In the City of Paterson such license can only be secured from the Board of Aldermen, which can grant or withhold it at will. The Board could arbitrarily refuse to license the sale of intoxicating liquor in any one of the three halls mentioned and all the loss which they now complain of would be inflicted upon them.

This question is well settled, but as an authority we select a decision of the Supreme Court of the United States, in which Justice FIELD said:

"The sale of such liquors in this way has therefore been at all times, by the courts of every state, considered as the proper subject of legislative regulation. Not only may a license be exacted from the keeper of the saloon before a glass of his liquors can be thus disposed of, but restrictions may be imposed as to the class of persons to whom they may be sold, and the hours of the day and the days of the week on which the saloons may be opened. Their sale in that form may

be absolutely prohibited. It is a question of public expediency and public morality, and not of federal law. The police power of the State is fully competent to regulate the business, to mitigate its evils or suppress it entirely. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of a State or of the United States. As it is a business attended with danger to the community, it may, as already said, be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of its regulation rest in the discretion of the governing body."

Crowley v. Christensen, 137 U. S., 91.

The California Supreme Court, following the *Christensen* case, decided that an ordinance prohibiting the sale of liquors or wines in dance cellars or other places where musical and theatrical entertainments are given, was a valid exercise by a municipal board of the general power to make local police, sanitary and other regulations.

Ex parte Hayes, 20 L. R. A., 701.

In *Mehlos v. Milwaukee*, 51 L. R. A. (N. S.), 1014, an ordinance regulating dance halls somewhat similar to the one under review was upheld as a valid exercise of the police power. The Court there said:

"Public meetings and meeting places which are liable to be characterized by disorderly conditions, or lead to breaches of the peace, or promote immorality, have, universally, been considered proper subjects for po-

lice regulation. Public dances and dance halls fall within the latter class. While if conducted in a proper manner such a hall and its use may afford opportunity for innocent amusement, in the absence of any regulation, it tends to breed disorder, indolence, intemperance, immorality, and to otherwise lower the standard of the people in the social state. Such places conducted for gain, open, in general, to all who come in suitable order to be received, no other conditions being exacted except the prescribed entertainment fee, are so liable to be centers of disturbance and character lowering or destruction, that they have been subjected to pretty severe regulation by statute and city ordinances, to preserve the possible benefits of such amusement places, and prevent the possible or probable abuses."

The ordinance in the above cause had a provision prohibiting all dancing after 3 A. M.

We submit that the provision in the ordinance under review prohibiting dancing in a public dance hall between 1 A. M. and 7 A. M. is a proper police regulation.

We respectfully submit the writs of certiorari should be dismissed.

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of Counsel with Defendant-Respondent.

