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Notice of Application for Writ of Certiorari.

NOTICE OF APPLICATION FOR WRIT OF CERTIORARI.

Served August 30, 1919.

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

Clarence H. Hedden, of full age, being duly sworn, on his oath, according to law, deposes and says: 10

That he is a citizen of the City of Newark, County of Essex and State of New Jersey.

That all licenses to sell intoxicating liquor in said City of Newark expire at midnight on the thirtieth day of June in each year, and new licenses run from the first day of July.

Deponent further says that on the 30th day of June, 1919, the said City of Newark, through the Department of Public Safety, granted to one Thomas C. Hayes a license to sell spirituous, vinous, malt and brewed liquors at No. 146 Plane street, in said City of Newark, for one year from July 1, 1919, to July 1, 1920. 20

Deponent further says that said license was improperly and illegally granted for the following reasons:

First. Because the Federal statute, popularly known as the "War-Time Prohibition Act" (Public Act No. 243—65th Congress, Sect. 1 (Fourth, par. 2)), approved November 21, 1918, forbids the sale for beverage purposes of any distilled spirits or of any beer, wine, or other intoxicating, malt or vinous liquors for beverage purposes, except for export, after June 30, 1919, "until the conclusion of the present war, and thereafter until the termination of demobilization, the date of which shall be determined by the President of the United States"; and therefore, since the present war has not been concluded, nor has demobilization been terminated as aforesaid, this grant of a license to sell "spirituous, vinous, malt and brewed liquors" for a period of one year from July 1, 1919, to June 30, 1920, was contrary to the Laws of the United States of America, which take precedence over any New Jersey statute when the two are in conflict, and therefore the officials of the City of Newark were without lawful authority to grant said license. 30

Second. Because the said license was issued in conflict with the Constitution of the United States of America, which for- 40

Notice of Application for Writ of Certiorari.

bids after January 16, 1920, the sale of intoxicating liquor for beverage purposes, and said issuance was therefore illegal and void.

Third. Because said action of said officials was in divers other respects irregular, contrary to law and void.

10 And deponent therefore prays that he may have a writ of certiorari allowed him to have the said license set aside and reversed.

CLARENCE H. HEDDEN.

Subscribed and sworn to before me this
25th day of August, 1919.

Wm. E. DAVENPORT,
Notary Public of N. J.

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Writ of Certiorari.

WRIT OF CERTIORARI.

The State of New Jersey to the Department of
(SEAL) Public Safety of the City of Newark and William J.
Egan, City Clerk of the City of Newark. GREETING:

We being willing for certain reasons to be certified of the cer-
tain proceedings had by the Department of Public Safety of the
City of Newark in connection with the application of one Thomas
C. Hayes for a license to sell spirituous, vinous, malt and
brewed liquors at No. 146 Plane street, in said City of Newark,
County of Essex and State of New Jersey, and the license
granted to him in accordance therewith on or about June 30,
1919,

Do hereby command you that the said license and the records
of the said Department of Public Safety of the City of Newark
aforesaid, together with all other things touching or concerning
the said license, by whatever names the parties may therein be
called, as fully and entirely as before you they may remain, to our
Justices of the Supreme Court of Judicature at Trenton, on
the 23rd day of September, 1919, you do certify and send, to-
gether 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, Esq., Chief Justice of our
Supreme Court, at Trenton, this third day of September, A. D
1919.

ENOCH L. JOHNSON,
Clerk.

G. ROWLAND MUNROE,
Attorney.

ALLOCATOR.

I allow this writ. It is not to operate as a stay.

WM. S. GUMMERE,
C. J.

Reasons.

REASONS.

New Jersey Supreme Court

10 CLARENCE H. HEDDEN,

Prosecutor,

vs.

THE DEPARTMENT OF PUBLIC SAFETY OF THE
CITY OF NEWARK, WILLIAM J. EGAN (City
Clerk of Newark) and THOMAS C. HAYES,
Defendants.

On Certiorari.

Reasons.

20 The said prosecutor, by G. Rowland Munroe, his attorney,
comes and prays that the proceedings, order or determination
had or made by the DEPARTMENT OF PUBLIC SAFETY OF THE CITY
OF NEWARK, in connection with the application of Thomas C.
Hayes for a license to sell spirituous, vinous, malt and brewed
liquors in said City of Newark, on or about the 30th day of
June, 1919, may be set aside, reversed, and for nothing holden,
for the following reasons:

30 FIRST. Because the applicant for said license applied for a
license to sell such liquors for one year from July 1, 1919, to
July 1, 1920, and said license was granted for said period,
while the laws of the United States of America (Public Law
No. 245, approved by the President November 21, 1918), pro-
viding for "War-Time Prohibition," forbids throughout the
United States the sale, for beverage purposes, of any distilled
spirits or of any beer, wine, or other intoxicating malt or vinous
liquors, after June 30, 1919, "until the conclusion of the present
war and thereafter until the termination of demobilization, the
date of which shall be determined by the President of the United
States;"

40 And, therefore, since the present war has not been concluded,
nor has demobilization been terminated as aforesaid, the grant
of a license to sell "spirituous, vinous, malt and brewed liquors"
in said City of Newark, for a period of one year from July 1,
1919, to June 30th, 1920, is contrary to the laws of the United
States of America, which take precedence over any State law

Reasons.

of the State of New Jersey when the two are in conflict, and, therefore, the Department of Public Safety of the City of Newark was without lawful authority to grant said license.

SECOND. Because the said license was issued in conflict with the Constitution of the United States of America, which forbids, after January 16, 1920, the sale of intoxicating liquors, for beverage purposes, and said issuance was, therefore, illegal and void. 10

THIRD. Because said action of said Department of Public Safety was in divers other respects irregular, contrary to law and void, and should be set aside and be for nothing holden.

(Signed) G. ROWLAND MUNROE,
Attorney for Prosecutor.

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Return.

CERTIFICATE OF CLERK ON RETURN.

10 In obedience to the command of the within writ, directed to me, I, William J. Egan, City Clerk of the City of Newark, do hereby certify and send to the Honorable the Justices of the Supreme Court of Judicature of the State of New Jersey, a certain license to sell spirituous, vinous, malt and brewed liquors at No. 146 Plane street, in the City of Newark, issued by the Department of Public Safety of the City of Newark to Thomas C. Hayes, which said license is dated the 30th day of June, A. D. 1919, and the records of said Department of Public Safety of said the City of Newark, together with all things touching and concerning the said license as fully and entirely as before me they remain, together with the said writ, as within I am commanded.

20 In Witness Whereof I have hereunto set my hand and affixed the seal of the City of Newark, this 22nd day of September, 1919.

W. J. EGAN,

City Clerk of the City of Newark.

(SEAL)

WILLIAM J. BRENNAN,
Director.

FRANK J. McNULTY,
Deputy Director.

30 A. J. COZZOLINO,
Commissioner of Licenses.

40

Return.

DEPARTMENT OF PUBLIC SAFETY.

LICENSE DIVISION.

City Hall, Newark, N. J.

Inspectors:
Joseph E. Fletcher,
Charles M. Jessup.

Inspectors:
George A. Roehm,
August H. Gewecke.

10

Dear Sir:

You are hereby notified that all wholesale and retail liquor licenses, dance hall and restaurant licenses in connection with the sale of liquor will expire on July 1, 1919.

You are therefore ordered to appear at the License Division, Department of Public Safety, City Hall, in person, not later than June 10 next, if you intend to file your application for a renewal of your license.

20

No renewals will be considered if application and license fees are not in this office by June 10th.

To save time and avoid mistakes the respective fees will be as follows, and all checks must be certified and made out to the order of W. J. Egan, City Clerk:

Retail Liquor License.....	\$500
Wholesale Liquor License.....	550
Dance Hall License.....	100
Restaurant (for 50 chairs or less).....	10
Restaurant (for over 50 chairs).....	20
Beer Bottling License.....	200

30

The following is an act authorizing a refund of certain license fees whenever the sale of intoxicating liquors for beverage purposes is prohibited by law:

1. "Whenever the sale of intoxicating liquors for beverage purposes shall be prohibited by law, any person holding a license to sell such liquors may surrender such license, and shall thereupon become entitled to a refund of such portion of the license fee paid by him as the unexpired term thereof at the time of such surrender bears to the whole period for which such license shall have been granted.

40

2. "This act shall take effect immediately."

This notice is final.

Return.

Trusting you will give this notice your immediate attention and not wait until the last day, we beg to remain,

Respectfully yours,

WILLIAM J. BRENNAN,
Director of Public Safety.

A. J. COZZOLINO,
Commissioner of Licenses.

APPLICATION FOR RETAIL LIQUOR LICENSE.

Newark, N. J., June 9th, 1919.

To the Director of Public Safety of the City of Newark—
Commissioner:

I hereby respectfully make application for a license, and make the following statement in reply to questions hereinafter mentioned:

Name of applicant, Thomas C. Hayes.

Business Address, 146 Plane street.

Residence, 146 Plane street.

What was your occupation prior to the filing of this application? Saloonkeeper.

Are you a citizen of the United States? Yes.

Where were you born? New Britain, Conn.

Date of Birth? 1862.

When and where were you naturalized?

Where have you resided for the past five years? 146 Plane street.

Have you ever kept a saloon before?

Where and for how long a time? 146 Plane street; 18 years.

Are you going to conduct this saloon yourself? Yes.

Is there anybody interested in the business with you? No.

If so, state name.

Is he a citizen? Address?

Were you ever convicted of any crime or misdemeanor? No.

What is the seating capacity?

Have you a dance hall? No. Give size.

Have you a cabaret? No.

Have you a hotel? No. Have you a bowling alley? No.

Return.

Have you dancing in your ———? No. If so, give size of dancing space.

What Police Precinct is your saloon located in? 2nd.

What Ward is your saloon located in? 2nd.

What District is your saloon located in? 12th.

Will you expose the license certificate in the window of your place of business? Yes. 10

Have you Internal Government Tax Certificate? Yes. Date? 1918. Under what name? Thomas C. Hayes.

Will you expose the Government Tax Certificate in the window of your place of business? Yes.

If license is granted do you agree to conduct your business in full compliance of the laws of the State, Ordinances of the City and Orders of the Public Safety Department? Yes.

By whom are said premises owned? Ballantine Brewing Co. Address _____.

Since when have premises been continuously occupied as saloon? Thirty years. 20

Have you ever had a license refused you or revoked? No. This application has my approval.

.....
Title.

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Return.

Endorsement:

COPY

APPLICATION FOR
RETAIL LIQUOR LICENSE.

- 10 Name, Thomas C. Hayes.
- Place of business, 146 Plane street.
- Residence, 146 Plane street.
- Where born, New Britain, Conn.
- License No. 510.
- Ward, 2nd.
- District, 12th.
- Date when presented, June 9th, 1919.
- Date when paid, June 9th, 1919.
- Date when granted, June 30th, 1919.
- 20 Date of expiration, July 1st, 1920.
- Investigated by _____.

STATE OF NEW JERSEY,)
 COUNTY OF ESSEX,)
 CITY OF NEWARK.) ss.

30 Thomas C. Hayes, being duly sworn, on his oath deposes and says that he is the subscriber named in the within application; that the statements and answers therein contained are true; that he is a citizen of the United States, and is, and has been, for at least one year next preceding the date of said application, a resident of the City of Newark and is entitled to receive the license applied for.

THOMAS C. HAYES.

Sworn to before me this 9th
day of June, 1919.

.....
Name of Witness.

40 GEORGE A. ROEHM,
Notary Public of New Jersey.

Return.

Abstracts of a meeting of the Department of Public Safety, Excise Division, held June 30, 1919.

Newark, N. J., June 30, 1919.

A meeting of the Department of Public Safety, Excise Division, was held on the above date in the City Hall at 9:30 A. M., Director Brennan presiding.

10

MINUTES.

Minutes of last meeting were read and approved.

The following licenses and transfers were granted by Director Brennan:

* * * * *

510 Thomas C. Hayes, 146 Plane street.

* * * * *

City Clerk. 20

Clerk of the Excise Division,
Department of Public Safety.

AFFIDAVIT OF CHARLES F. SHASTNY.

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

Charles F. Shastny, of full age, being duly sworn according to law, on his oath saith that he is a clerk in the office of the "Newark Evening News" and that a notice of which the annexed is a true copy, was published on the 19th day of June, A. D. 1919, in the said "Newark Evening News," a public newspaper, printed and published at Newark, in this State, and continued therein for four days successively thereafter, making five insertions in all.

30

CHARLES F. SHASTNY.

Sworn and subscribed this 24th day
of June, 1919, before me,

HENRY W. MORRIS.

40

Return.

Office of
The Department of Public Safety,
Excise Division,
of the
City of Newark.

10

City Hall, June 19, 1919.

The following is the list of names, residences and places of business of applicants for licenses, contained in all applications or petitions made to this board for the granting of licenses to sell spirituous, vinous, malt or brewed liquors, and not heretofore published according to law, to wit:

Place of Business	Name	Residence
* * * *	* * * *	* * *
146 Plane street.	Thomas C. Hayes.	Same Place.
* * * *	* * * *	* * *

20

WILLIAM J. BRENNAN,
Director, Department of Public Safety.

A. J. COZZOLINO,
Commissioner of License.

RETAIL EXCISE LICENSE.

To Sell Spirituous, Vinous, Malt and Brewed Liquors.

30

This License Expires July 1, 1920.

The Department of Public Safety
of the City of Newark.

No. 510.

By virtue of the Laws of the State of New Jersey relating thereto, have and by these presents do grant to \$500

\$500

Thomas C. Hayes.

40

a license to sell spirituous, vinous, malt and brewed liquors at No.

146 Plane St.

in said City, from July 1, 1919, to July 1, 1920, upon the conditions and subject to the provisions of the laws regulating the sale of intoxicating and brewed liquors and granting of licenses therefor.

Return.

Approved by A. J. Cozzolino, Excise Division, Board of Public Safety, Newark, N. J., June 30th, 1919.

Issued by William J. Brennan, Director of Department of Public Safety.

Attested, Wm. J. Egan, City Clerk.

This License Must Be Kept in the Window of the Licensed Place.

10

Endorsement on "Return."

NEW JERSEY SUPREME COURT.

Clarence H. Hedden,

Prosecutor,

vs.

The Department of Public Safety of the
City of Newark, et. als.,

Defts.

20

On Certiorari.

Return.

William J. Kearns,

Atty. of Defts.

The Department of Public Safety of the City of Newark and
William J. Egan, City Clerk of the City of Newark, 920 Broad
St., Newark, N. J.

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Filed

Sep. 22, 1919.

Enoch L. Johnson,

Clerk.

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Final Order.

FINAL ORDER.

NEW JERSEY SUPREME COURT.

10 CLARENCE H. HEDDEN,

Prosecutor,

vs.

THE DEPARTMENT OF PUBLIC SAFETY OF THE
CITY OF NEWARK AND THOMAS C. HAYES,

Defendants.

On Certiorari.

Rule.

20 The Court having inspected the transcript and proceedings
of the Department of Public Safety of the City of Newark,
returned with the certiorari in this cause, in connection with
the granting of a license to the defendant, Thomas C. Hayes,
to sell spirituous, vinous, malt and brewed liquors at No. 146
Plane street, in said City of Newark, for one year from July 1,
1919, the reasons for reversing the determination of said de-
partment, and having heard the argument of counsel therein,
and having duly considered the same, do order that the deter-
mination of the said Department of Public Safety authorizing
the issuance of the said license to said Hayes, and the said
license issued in accordance therewith be reversed, set aside,
30 made void and for nothing holden, with costs.

Dated November 17th, 1919.

F. J. SWAYZE,

J.

*Notice and Grounds of Appeal.***NOTICE AND GROUNDS OF APPEAL.**

Filed.

New Jersey Court of Errors and Appeals

10

 CLARENCE H. HEDDEN,
Prosecutor-Respondent,
vs.
 THE DEPARTMENT OF PUBLIC SAFETY OF THE
 CITY OF NEWARK AND THOMAS C. HAYES,
Defendants-Appellants.

*On Application
for Stay.**Notice of Appeal.*

20

To G. Rowland Munroe, Esquire, Attorney for Prosecutor:

TAKE NOTICE that the defendants appeal to the Court of Errors and Appeals of the State of New Jersey from the whole of the judgment entered in this case, upon the following grounds:

1. The Court refused to dismiss the writ of certiorari issued herein.

2. The Court below erred in holding that prosecutor has the right to question by direct attack the validity of the municipal action reviewed herein.

3. The Court below erred in holding the municipal action reviewed resulting in the issuance of license to Thomas C. Hayes was contrary to law.

4. The Court below erred in holding that the license issued to Thomas C. Hayes by the municipal authorities of the City of Newark is in violation of the Act of Congress of November 21, 1918, entitled, "An Act to enable the Secretary of Agriculture to carry out during the fiscal year ending June 30, 1919, the purpose of the Act entitled 'An Act to provide further for the national security and defense by stimulating agriculture and facilitating the distribution of agricultural products,' and for other purposes."

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40

Notice and Grounds of Appeal.

5. That the prosecutor was in laches in making application for said writ of certiorari.

10 6. That said license was issued in contemplation of Chapter 158 of the Laws of 1919 of the State of New Jersey, which provides for a rebate of the license fee in case the sale of intoxicating liquors for beverage purposes should be generally prohibited by law, which act became effective on April 15, 1919.

7. That said license, under the statute existing at the time of its issuance, while on its face was for a period of one year, was in fact and in law for an indeterminate period under the aforesaid act.

20 8. The Court below erred in finding that the municipal action reviewed herein was illegal and contrary to law, whereas said Court should have found said municipal action to be lawful.

Dated, November 17, 1919.

WM. J. KEARNS,

*Attorney for the Department of Public
Safety of the City of Newark.*

ANDREW VAN BLARCOM,

Attorney for Thomas C. Hayes.

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New Jersey Court of Errors and Appeals

CLARENCE H. HEDDEN,
Prosecutor-Respondent,

vs.

THE DEPARTMENT OF PUBLIC SAFETY OF THE
CITY OF NEWARK, THOMAS C. HAYES, *et al.*,
Defendants-Appellants.

On Certiorari.

*On Appeal from
Supreme Court.*

BRIEF FOR PROSECUTOR-RESPONDENT.

The object of the writ is correctly stated in the opening of appellants' brief. One error of fact occurs, however. The writ was originally applied for on August 25th, not September 3rd, as stated, but the Court, owing to its view of the importance of the matter, ordered notice given to the City of Newark, and so the writ was not considered and granted until September 3rd.

The matters argued in appellants' brief will be considered in the order followed therein, and reasons shown why the order of Mr. Justice Swayze in the court below should be sustained.

This case, it is understood, will be considered by the Court in connection with the similar case of *Wilson v. Jersey City*, also pending, and argued as No. 64 on this term's calendar.

In that case the essential facts are the same as in this one, and Justice Swayze, having filed a written opinion in that case, and it being agreed on argument before him that the conditions were practically identical, no opinion in this case was filed. When the same points were raised, however, and were covered by the opinion of the Court below, in *Wilson v. Jersey City*, reference will be herein made to that opinion.

POINT I.

The prosecutor-respondent had the right and necessary standing to prosecute the writ in question.

In this case, as in the other, it is argued that the prosecutor has no standing or right to be heard.

The Court below held, on this point in *Wilson v. Jersey City*, that the prosecutor, admittedly a citizen of Jersey City, though not specially injured in distinction from the rest of the public, had, within the scope of *Ferry v. Williams*, 41 N. J. Law 332, all necessary standing to prosecute the writ (case, p. 25; *Wilson v. Jersey City*).

Appellant's brief, however, attempts to distinguish the case at bar from *Ferry v. Williams*, and to include it rather with the class of cases such as he cites, cases directly affecting property rights, highway cases where the prosecutor was not an abutting property owner, for instance, and where the courts have held that some special interest or injury, above the rest of the public, must be shown to enable a prosecutor to maintain his action under a prerogative writ. He relies upon three cases (Appellant's Brief, p. 1), the latest of which is *Oliver v. Jersey City*, 63 N. J. L. 634, confirming 63 N. J. L. 97.

This case considers and sums up the preceding cases, and clearly includes a case such as ours within the class where no special interest need be shown, when it says, at p. 100:

"But in *State v. Justices of Middlesex*, Coxe 244; in *State v. New Brunswick*, *id.* 393; in *State v. Griscom*, 3 Halst. 136; in *State v. Holliday*, *id.* 205; in *State v. Rahway*, 4 Vr. 110; in *State v. Tolan*, *id.* 195, and in *Ferry v. Williams*, 12 *id.* 332, the writs of certiorari and mandamus were allowed to a prosecutor who had no interest in the subject-matter of the litigation other than that which vested in every other citizen, and in all those cases no other remedy was available to the citizen to guard him from being deprived of his rights as one of the public. * * *

"This apparent conflict in the cases" (highway cases as aforesaid) "is logically reconcilable upon the rule laid down by Mr. Justice Dixon in *Ferry v. Williams*, whenever there is no other appropriate remedy, if the act attempted to be authorized is permitted to be consummated."

In the case at bar there long had existed in the Newark municipal authorities the right, under the state law, to grant such a license as the one in question. The act in granting the license was not one without a show of authority. The question to be decided was a novel one, viz.: What was the effect of the passage of the Federal Act in question, and the Federal Constitutional Amendment in question, on the State law? And the only "appropriate remedy" to review this municipal action was clearly by this prerogative writ.

Criminal action to punish the licensee, a collateral attack, was not the appropriate remedy to get at the matter. "The prosecutor," as the Court below held in *Wilson v. Jersey City*, "has the right to question by direct attack the validity of municipal action which may stand in the way of a prosecution for crime by the Federal authorities," as well, it would seem, as in the way of the State authorities, should State prosecution be attempted, as suggested in appellants' brief.

The prosecutor, as a citizen, and simply because he was a citizen, had all needed standing to prosecute the writ in this case.

In the present case it is further urged, however, that the record does not set forth that prosecutor is a taxpayer and that this makes an added reason why he is not competent to maintain this writ.

As a matter of fact the proper record in this case should not show anything about the prosecutor, except his name. The record proper begins with the writ (case, p. 3) and the printed applying affidavit for the writ, improperly called "Notice of Application for Writ of Certiorari" (case, pp. 1 and 2), is not properly any part of the record in this court. It was simply part of the case considered by the Court for the allowance of the writ.

Chief Justice Gummere, in the presence of both the counsel who sign appellants' brief, inquired, on the application for the writ, who the prosecutor was and whether he was a taxpayer. Counsel for prosecutor replied that he was a hat manufacturer in Newark and a taxpayer, and the writ was granted. This verbal statement, like the printed affidavit, is not legally a part of the record, but it also was before the Court and taken into account in granting the writ. The defendants had full opportunity, under the rules, to take testimony, or depositions, on this point, but they did not elect to do so, and there is nothing in the record affirmatively to show why the writ was granted. The Court below passed on the propriety of granting it, and this Court has ruled on the question of such an objection raised on appeal in this court in the case of *Avon v. Neptune City*, 57 N. J. L. 701, p. 702 (Ct. of Errors), Dixon, J. (all concur):

"With regard to the objection that the prosecutor of the writ * * * was not shown to have owned any lands along the line of the proposed railway or within the borough * * * therefore its right to complain * * * does not appear, we think that, after the allowance of the writ, such right

should be assumed in the absence of proof to the contrary. * * * On final hearing, his right to prosecute is not primarily involved, unless the return of the writ or the proofs taken under it affirmatively show his lack of legal interest in the controversy."

Appellants' brief cites two cases on this point. They are both cases in the Supreme Court. The first follows the line of this Court in the Avon case, and the second cites with approval the first case, which is *White v. Atlantic City*, 62 N. J. L. 644, Gummere, *J.*, gave the opinion of the Court, and at p. 645 says:

"The prosecutor in this case both sued out the writ and prosecuted it before this Court, as a citizen and taxpayer of Atlantic City. He did not, however, submit any proof upon this point, and it is insisted that, because of his failure to do so, this writ should be dismissed.

"The rule that the plaintiff in certiorari must prove his status is not universal, and those cases in which he prosecutes as a citizen and taxpayer are exceptions. In those cases his right to prosecute will be presumed to exist without proof, in the absence of any call for evidence on the subject. *West Jersey Traction Co. v. Camden*, 29 Vroom 362."

This case, it should be noted, was a review by certiorari, of a license to sell liquors, and no special interest in, or injury to the prosecutor was shown or, apparently, suggested.

In the case at bar there is no ground for the suggestion that the prosecutor is not a citizen and a taxpayer (if the latter characteristic is a necessary feature of such a case as this, which is neither conceded nor disputed), but there is a well established presumption that the writ was properly granted, in the absence of proof to the contrary.

The reference in appellants' brief to *Ferry v. Williams*, discussed *supra*, is incorrect as to the apparent object of the case. It was not brought to gain evidence of violation of law to lay the facts before the prosecutor of the pleas, but rather to attack the regularity of the issuance of the liquor license in question. It will be noted, also, that the prosecutor is referred to simply as "a citizen of Orange." The following quotations are much in point on the standing of the ordinary citizen in such a case.

The decision, as reported in 41 N. J. L. at p. 332 (opinion by Dixon, *J.*), reads:

"The relator in this case, a citizen of Orange, believing that the requirements of this law as to these letters of recommendation were not obeyed, and desiring, with other citizens, to secure a due observance of its provisions, ap-

plied to the collector of taxes for an inspection of the letters on which the existing licenses had been granted. * * * The relator now seeks a writ of mandamus to enforce his alleged right of inspection, and the collector denies that he has such a right. * * *

P. 334. "The relator asserts no interest to be subserved by an inspection of these letters, except that common interest which every citizen has in the enforcement of the laws and ordinances of the community where he dwells.

* * * * *

P. 336. "Nor is it essential that his interest should be private, capable of sustaining a suit or defense on his own personal behalf. It will justify his demand for inspection, if he may act in such suit as a representative of a common or public right. * * *

At p. 337. "If inspection * * * will be granted to a private individual when he is seeking merely the furtherance of his own private ends, *a fortiori* should it be accorded to him when he is aiming at the accomplishment of a public purpose, as to which the courts will assist his design through a suit instituted by him in the public behalf.

* * * * *

"The English rule, that the redress of wrongs, arising from usurpations and unlawful acts of public officers, which do not directly affect private persons or property, must be attained through the suit of the Attorney General, has not been generally followed in the practice of this State. Indeed, it is not uniformly observed in the mother country. * * *

P. 338. "There are certainly instances of interference by the Courts with official action affecting only public rights at the suit of private persons, where questions of taxation were not at all concerned (cases cited and quoted from). * * *

P. 339. "These cases seem to indicate that with us the exception to the rule is extended so far as to justify this Court in acting by *mandamus, certiorari or quo warranto*, at the instance of private persons, for the redress or prevention of public wrongs by which bodies and officers, whose official sphere is confined to some political division of the State, whenever the applicant is one of the class of persons to be most directly affected in their enjoyment of public rights, and the public convenience will be subserved by the remedy desired. * * *

"The present controversy relates to a matter of public police of universally recognized importance, concerning a traffic which, in the opinion of many, largely adds to the disorders of society and the burdens of taxation; and

it cannot be alleged that private interests are not as much involved in its due regulation by law as they are in other public questions about which heretofore individuals have maintained a standing. * * * Let the mandamus prayed for be awarded."

This decision admirably sets forth the nature of the interest of the prosecutor in this case and his standing before this Court. His citizenship in the community affected is his sufficient credential.

POINT II.

The prosecutor proceeded with due diligence and is not barred by laches.

As explained to the Court below, in the Jersey City case, as will appear therein (*Wilson v. Jersey City* (case, p. 14 and p.5)), the writ was obtained the day after the license was granted. It was a test case for Jersey City, where 734 similar licenses were granted the same day, as were 1,300 in Newark. As it was a test case, the first case of the kind in the State, rather than multiply cases it was thought best to await the decision in this Jersey City case before bringing others, concerning Newark or elsewhere.

As soon after the decision in the Jersey City case as vacation sittings of the Court would permit, the application for this writ was made. In fact, the final order in *Wilson v. Jersey City* was entered (that case, p. 26) on September 2, 1919, the day before this writ was granted, and, as before stated, a previous application had already been made to the Court on August 25, 1919, but hearing was deferred until the City of Newark should have formal notice of the application.

This explanation, made on the argument below on the granting of the writ, met with the hearty approval of the Court and offset this suggestion of laches.

The cases cited in appellants' brief on the question of laches would seem to have little relevancy to this case at bar.

Brodhead v. Freeholders, 72 N. J. L. 118, concerned a writ allowed December 31, 1903, to review a resolution of July 8, 1903, nearly six months prior, providing for the ordering of index books, which had to be specially printed and which were printed before the writ was applied for. The Court naturally held:

“We think the prosecutor failed to move with sufficient promptness when he waited until the books had been made and delivered to the county, and for this laches the writ must be dismissed.”

In *Sturr v. Elmer*, 75 N. J. L. 443, there was more than a year's delay in applying for the writ of certiorari, and yet the Court held, at p. 446, opinion by Trenchard, J.:

“It does not seem to us that the delay * * * has resulted in any detriment to the borough,” and the issue of the writ was upheld.

As appellants' brief says: “What is vigilance must be tested by the peculiar facts of each case.”

The striking fact in this case is that the case is before this Court now, for consideration at the same time as the other case, *Wilson v. Jersey City*, in which the writ was granted the very day after the license was issued. This would seem to show all needed diligence, as this is the first term since the action to be reviewed was taken.

Furthermore, the attempt to show damage to defendant Hayes because of alleged improper delay would seem to be decidedly illogical. What he wants is to enjoy his license, that he paid \$500 to procure and for which he is now contending on appeal in this court. If he wanted to get rebate, the statute quoted providing therefor has been standing there to enable him to do so. The longer this prosecutor delayed the longer he, Hayes, would enjoy his coveted license undisturbed. The damage alleged, under these conditions, is far to seek. The assertion of harmful laches is not sustained.

POINT III.

The Act of Congress of November 21, 1918, commonly known as “The War-time Prohibition Act,” abrogated the power of the municipal authorities of Jersey City to grant the license under review.

Appellant's brief (Point III) argues at some length that the Act of Congress, commonly known as “The War-time Prohibition Act” (Public Act No. 243, 65th Congress, Sec. 1 (Fourth, par. 2)), approved November 21, 1918, and fully set forth in appellant's brief (p. 6), did not prohibit, expressly or impliedly, the issuance of the license under review.

It argues: (a) The Act fixes no time, in months and days, during which sale of the liquors described shall be forbidden;

and therefore it implies that a license to run for a year from the very day that the Act took effect, July 1st, was proper, since some time during that year there might be a day, or a few days or weeks, during which the ban of this Federal law might be lifted by the appropriate proclamation of the President. It also argues: (b) That Chapter 158 Laws of 1919, providing for a proportionate rebate of license fees, "whenever the sale of intoxicating liquor for beverage purposes shall be generally prohibited," implied some sanction of our state law for the issuance of a license to run over a period during which an Act of Congress and the Federal Constitution forbade the sales which the license would permit; and (c) that such license, by its language and by general legal effect, only grants such privileges as are not contrary to law; and (d) that even if the licenses could not legally run for a full year they could still be granted for a year, because, it is urged, a license for less than a year is permissible under our state law; and (e) that if this license, and the other licenses granted with it, had not been issued when they were, some of them, under Chapter 280 of the Laws of 1913, might not be able to be revived, even should a time eventuate between war-time and constitutional prohibition, when licenses might validly issue.

This analysis shows that the arguments beg the real question, which is: *Was there any power in the Department of Public Safety of Newark to grant the license in question, or was their power suspended, or abrogated, by the Act of Congress and the Constitution of the United States?* If said Board then had no power to legally grant the license, these minor points raised are of no moment. But let us glance at them, in order named:

(a) It was entirely immaterial how long the Act of Congress might continue to prohibit. (As a matter of fact its period is not yet terminated; no peace treaty has been signed; no proclamation issued.) The license purported to give a right to sell for one whole year from July 1, 1919, and it was void the very day its term began. It must speak as of the date of its inception, and in its inception it was illegal and void.

(b) No added state law (such as Chapter 158, Laws of 1919) could add anything to a power which no longer existed.

If the superior law of the land had removed, for the time being, the power to act, that power could not be augmented, for it was non-existent. In any event this 1919 act purported to give no power except that to demand and pay a rebate.

(c) The license was stated to be granted (case, p. 12) "upon the conditions and subject to the provisions of the laws *regulating* the sale of intoxicating and brewed liquors." As the Court below, in *Wilson v. Jersey City* (case, p. 24) held: "But laws regulating the sale are very different from laws prohibiting the sale."

See, also, *Paul v. Gloucester*, 50 N. J. L. 585, at 587 and at 590; also, *State v. Fay*, 44 N. J. L. 474, at p. 477, in which Mr. Justice Dixon says: "Intrinsically regulation and prohibition range in different spheres. No sale which is prohibited is regulated and none regulated is prohibited."

The argument under "d" above has already been considered, and that under "e" is without force.

Returning to the real question, let us consider *what power inhered in these municipal authorities on July 1st, 1919.*

Congress was competent to pass the Act in question, as a war measure. (Constitution of the United States, Art. 1, Sec. 8, pars. 12, 13, 14, 18, etc.)

Neither is it necessary to argue that no state law can be enforced, or held valid, while it conflicts with a statute of the United States.

The Constitution of the United States, Art. VI, Sec. 2, provides: "This Constitution, and the laws of the United States which shall be made in pursuance thereof, * * * shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

See, also: Enc. of Pleading and Practice, 1st Ed., Vol. 22, p. 326, "Statutes Impairing Federal Jurisdiction," cases cited.

The New Jersey Digest, Vol. I, 1884 (Constitutional Law 11, Sec. 20-a), in its digest of *State, Wagner pros. v. Jackson*, 31 N. J. L. 189, well states the situation as follows:

"Held that any legislation by the state or its municipal corporations, contrary to an Act of Congress, or which obstructs the Federal Government in performing its functions, is invalid. It need not be in direct opposition to an Act of Congress, or in terms annul it, but if such legislation tend, or may tend, to defeat its operation, the legislation is void."

This language is not an exact quotation from the decision itself, but admirably summarizes the necessary outcome of a conflict between a state and federal statute, where the federal law has right of way, as it unquestionably has in a matter relating to the carrying on of the Nation's war.

As we were still at war on July 1st, as demobilization of our army was not yet terminated, the act of the Board of Commissioners of Jersey City, in attempting to exercise powers conferred by our state laws, but which had become contrary to the Federal law and Constitution, was clearly illegal and void.

Under Point "III-B" appellants' brief urges that the license does not in terms conflict with the War-Time Prohibition Act. It lays great emphasis upon the word "*intoxicating*" in this Act of Congress and quotes from a recent decision of the United States Circuit Court of Appeals for the Second Circuit. It then refers to the fact that our license statutes do not use the word "*intoxicating*" in describing liquors covered by them, but instead describe them as "spirituous, vinous, malt or brewed liquors" and deduces from all this the alleged absence of conflict between the license at bar and the War-Time Prohibition Act.

Justice Swayze, in the Jersey City case (p. 24 of that case), says, on this point:

"It is idle to suggest that the license may authorize some sales, say for export" (or, we might add, of some liquors, that might not be intoxicating), "or at some time, say between the end of the war and the taking effect of the 18th Amendment. The Court has no way of knowing that the Commissioners would have issued, or the licensee have accepted a license thus limited. *Moreover, the sale of any intoxicating liquors for beverage purposes is absolutely prohibited after January 16, 1920, and the license purports to permit the sale for nearly six months longer.*" (Italics ours.)

The license to Hayes purports to permit the sale of every kind of liquor coming under the heads of "spirituous, vinous, malt and brewed liquors," and that certainly would seem to include them all; intoxicating and non-intoxicating, weak and strong, dark and light, "2.75" or 90%. It gives the right to sell them all, subject only "to the provisions of laws *regulating* the sale of intoxicating and brewed liquors." But we are confronted with absolute prohibition, certainly after January 16, 1920, as Justice Swayze points out, and this license is in plain conflict with the features, or provisions, of the law discussed, which are not in dispute; it is, therefore, invalid. It can hardly be argued that the license is partly good and partly bad, partly valid and partly invalid. It is not a question of what the licensee might actually do, but what the license purports to permit him to do, that must determine its validity or illegality.

Under Point "III-C." Appellants' brief presents a brief on the constitutionality of the War-Time Prohibition Act, apparently prepared for the United States Supreme Court. It was served on respondent's counsel only four full days before the expiration of time to file briefs herein, including a Sunday, and the printer requires three of these four days for his work, so any detailed consideration of this section of the brief is as impossible as it seems unnecessary.

It is not conceived that this Court desires to hear argument on the constitutionality of an Act of Congress. So long as the act stands, it remains "the supreme law of the land," and the Federal Constitution proclaims that "the Judges in every State shall be bound thereby," it is taken for granted that this Court will not go into such a discussion. Hence this feature of appellants' brief is not further discussed. If desired, and time is granted, an answering brief on this matter would be gladly filed.

To pass to the conclusion, in the last few paragraphs of Point "III-C" it is said: "Under the act in question, Congress has prohibited the sale of distilled spirits for *beverage purposes except for export.*" This license would permit the sale of distilled spirits for all purposes, in amounts not to exceed one quart, and hence clearly not for export, subject only to "the laws regulating the sale"—that is of such laws as deal with sales on Sunday, or to minors, or to one already intoxicated, etc. This is a plain example of the conflict involved, and the resulting illegality of this license, issued under State law, contrary, at the time of issuance at least, to an Act of Congress.

The question of the propriety or constitutionality of the act cannot be brought into this case, and the question of the sale of liquors alleged not to be intoxicating does not obviate the vice of the absolute conflict with other liquors clearly within the purview of the act.

POINT IV.

Since the License is in Conflict with the "War-Time Prohibition Act" it must fail.

A.

The license could be offered as a defense to prosecution in the criminal courts of the municipality and State.

The Massachusetts cases cited under this head in appellants' brief are not cases in point in this case. 139 Mass. 195 and 141 Mass. 81 both hold that a license to a hawker or pedlar from the commonwealth does not excuse its holder from obeying a local ordinance forbidding him to allow his vehicle to stop in a street for a longer time than 20 minutes. 158 Mass. 555 (not 55) bears on the same question.

The local municipality had an unquestioned right to pass the local ordinance in question and the Court in each case simply held that the State pedlar's license did not excuse a violation of the local ordinance.

In the case at bar the question is as to the right of the State, as it were, to authorize the thing the Federal law forbids. Had the State pedlar's license law said a pedlar might stand his vehicle more than 20 minutes in any place, in any municipality, and the municipality had passed a local ordinance to forbid that very thing, the cases would have been parallel with the case at bar, but there is no such matter suggested. That sort of thing, however, is presented in the case at bar.

The other cases cited are also remote from the issue in our case. They simply hold that so-called "government licenses" are merely liquor tax receipts and are no excuse, or defense, for selling liquor where a State law forbids its sale.

10 Allen 200 and 11 Allen 262 were cases where persons violating the laws of the commonwealth against the sale of liquor without a license attempted to interpose a "Government license," so called, but which was really only a receipt for a tax of \$25 to the Government, which tax had to be paid by all retailers of liquor.

The Court held (in the first case):

"The license which the defendant sets up in his plea did not, by the very terms of the act of Congress under which it was granted, and according to decision already made by this Court, authorize him to exercise any trade or occupation in violation of the laws of the commonwealth. U. S. St. 1862, C. 119, pars. 64, 67; 12 U. S. Sts. at Large

455, 459. *Commonwealth v. Thorniley*, 6 Allen 445. The reasons given in that case apply also to the defense sought to be established by reason of the payment of a tax to the United States."

No argument as to the effect of a Federal prohibition on an attempt by a municipality to license the prohibited action can be deduced from these cases. The Government assesses and collects a tax from retail liquor dealers. The State says there shall be no retail liquor dealers, and arraigns those violating its prohibition, and they seek to interpose the fact that they have paid a Government tax; not for the privilege of being such dealers but because they *were* in fact such dealers. The Courts hold that such tax payment is no defense, as it gives, and purports to give, no privilege.

The issues involved are entirely different from those in the case at bar.

If, however, the holder of this Newark license were arraigned in a Newark police court merely for selling liquor, his license from the Newark City government to do that very thing could certainly be interposed as a defense. The local Court would not and could not attack the validity of the license. Were he arraigned on the same charge in the county court, the State authority to Newark to issue such licenses, and the license issued in accord therewith could certainly be interposed as a defense; and, as we have argued before, that would not be the tribunal to pass on the effect of the Federal act on the State's authority to Newark to issue the license.

If Newark had no legal right to issue the license it should not be permitted to purport to authorize the doing of what "the supreme law of the land" forbids, and thus permit the possibility of its license being used to shield a violator of the law in the local and county courts.

B.

The license in question is not a tax but a license, an exercise of the police power, and attempts to permit and regulate an act forbidden by Congress.

The argument to establish that the license at bar is the exercise of the taxing and not the licensing power of the City of Newark is labored but without any real foundation or support.

There is a certain latitude allowed in the fixing of the exact amount of the license fee, above the fixed minimum, but this in itself does not change the character of the fee levied.

There is no evidence here of an intent to levy a tax for the purpose of taxation. It is a license whose language says it is issued by virtue of the laws of the State of New Jersey relating to the sale of intoxicating liquor, and subject to the laws regulating such sale and granting licenses therefor.

One of the very cases cited in appellants' brief makes the matter very clear, and the distinction drawn between a tax and a license is entirely convincing.

The case in question is:

Freeholders of Essex v. Barber, 7 N. J. L. 78, and at p. 80, Ford, J., says:

"The law for granting *licenses* to inn-keepers, under certain limitations, restrictions, and provisions is, at least, as old as the Revolution, and must not be confounded with a much later law in 1797, introductory of a regulation of quite a different kind, for taxing inn-keepers."

* * * * *

P. 81. "It manifestly appears that the power to *license* is totally distinct from the power *to tax*, each having annexed to it regulations, restrictions, and provisions peculiar to itself, and inapplicable to the other. The regulations about the power *to license* are, that the inn-keeper shall be recommended by certain persons, that his license shall be for only one year, that he shall enter into recognizance with security, and the like. The regulations governing the power *to tax*, respect the situation and advantages of the place for an inn, the limitations upon the amount, the paying down of the money," etc.

The "regulations about the power *to license*" noted in the opinion quoted are present in the case at bar and under this case are conclusive.

The much later case of *Meehan v. Board of Excise Commissioners of Jersey City*, 64 Atl. 689, states the familiar status of regulation of the liquor traffic by license as an exercise of the police power. It says:

"The right to regulate the sale of intoxicating liquors by retail, by the Legislature, or by municipal or other authority, under legislative power given is within the police power of the State, and is practically limitless."

* * * * *

"A license is not a contract. It is a mere privilege. * * * It has been subject to license and regulation at all times and is still so. This Court has so held. *Hoboken v. Goodman*, 68 N. J. Law 217 * * *; *Crocker v. Board of Excise of Camden* * * * 63 Atl. 901. One engaging

in the sale of liquor at retail, does so subject to the right of the State, under its police power, to terminate the business at its pleasure."

In the case of *Prosecutors v. Hoboken*, 41 N. J. L. 71, cited by appellants' brief, after quotation cited, the Court continues:

"The authority to license granted to the city of the second section of the supplement of 1866, is plainly a grant of that power for mere police purposes. It is given solely in the words 'to license and regulate,' from which it must be intended that regulation is the object, unless there be something in the language of the grant, or in the circumstances under which it is made, indicating with sufficient certainty the raising of revenue by means thereof was contemplated. *Cooley on Taxation* 408. There is no language in this charter indicative of such an intent."

Woolen and Thornton on Intoxicating Liquors, Vol. 1, p. 484 (Sect. 322) states the matter succinctly:

"The distinction between a tax upon a business and what might be termed a license, is, that the former is exacted by reason of the fact that the business is carried on, and the latter is exacted as a condition precedent to the right to carry it on."

And these authors discuss the Federal cases cited in appellants' brief, in the same vol., p. 450, Sec. 286, title:

"UNITED STATES LICENSE—EFFECT." "A receipt of a United States internal revenue collector for a tax on the business of a retail or wholesale dealer of intoxicating liquors or a license issued thereunder, is no authority to sell intoxicating liquors in violation of the laws of a state or the ordinances of a municipality or a corporation. The granting of such a license is regarded as nothing more than a mere form of imposing a tax, and of implying nothing except that the licensee shall be subject to no penalties under the laws of the United States provided he pays the tax. (*License Tax Cases*, 72 U. S. (5 Wall) 462.) Such a license gives no authority. It is a mere receipt for taxes."

POINT V.

The issuing of the license under review was contrary to the United States Constitution and hence void.

The Eighteenth Amendment to the United States Constitution becomes effective January 16, 1920. After that date it forbids "the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdic-

ion thereof, for beverage purposes." It was part of "the supreme law of the land," as above noted, from and after its ratification by the necessary number of states, as declared by its official certification on January 29th, 1919; so that on July 1, 1919, the attempt of the Board of Commissioners of Jersey City to issue the license in question to sell "spirituous, vinous, malt and brewed liquors" from July 1, 1919, to July 1, 1920, was not only flagrantly illegal, but equally contemptuous of our Nation's Constitution. Further argument of the point would surely be superfluous in view of the discussion hereinbefore had.

For all the reasons set forth above, it is urged that the decision of the Court below, holding that the license in question was illegally issued, that the Department of Public Safety of the City of Newark was without power in the premises, and that the license should be set aside with costs, should be sustained.

Respectfully submitted,

G. ROWLAND MUNROE,
Attorney and of Counsel for the Prosecutor-Respondent.

New Jersey Court of Errors and Appeals

CLARENCE H. HEDDEN,

Prosecutor-Respondent,

vs.

THE DEPARTMENT OF PUBLIC SAFETY OF THE
CITY OF NEWARK, and THOMAS C. HAYES,

Defendants-Appellants.

On Certiorari.

*On Appeal from
the Supreme
Court.*

BRIEF FOR DEFENDANTS-APPELLANTS.

The writ of certiorari in this case (p. 3), brought up for review the license granted by The Department of Public Safety of the City of Newark, to one Thomas C. Hayes, "to sell spirituous, vinous, malt and brewed liquors at No. 146 Plane street, in said city, from July 1st, 1919, to July 1st, 1920, upon the conditions and subject to the provisions of the laws regulating the sale of intoxicating and brewed liquors, and granting of licenses therefor" (C., pp. 12 and 13).

The writ was applied for and granted on the 3rd day of September, 1919. On November 17th, 1919, the Supreme Court, through Mr. Justice Swayze, following his action in the Jersey City case, entered an order setting aside the license at bar.

It is submitted that the order should be set aside and the license stand.

I.

The prosecutor has no standing or right to be heard.

The true rule in the point in question is to be deduced in three cases decided by this Court:

Jersey City v. Traphagen, 53 N. J. L. 434; *Tallon v. Hoboken*, 60 N. J. L. 212, and *Oliver v. Jersey City*, 63 N. J. L. 634, hold to the effect that if a private individual has no personal or property interest to be specially and immediately affected he has no right to a writ of certiorari.

The cases of *White v. Atlantic City*, 62 N. J. L. 644, opinion by Mr. Justice Gummere; and *Conover v. Gregson*, 72 N. J. L. 104, opinion by Mr. Justice Swayze, hold that a citizen and taxpayer have the right to a writ of certiorari to review the granting of a liquor license. Nowhere throughout the state of the case does it appear that the prosecutor will be specially affected by the license, nor that he is a taxpayer. The notice of the application for the writ (C., p. 1) does set forth that he is a citizen of the City of Newark. It is submitted that the prosecutor, not coming with the rules annunciated in the above cases, has no right to the writ.

It might be contended that he does come within the case of *Ferry v. Williams*, 41 N. J. L. 332. In that case it was held that the relator was entitled to a writ of mandamus, so that he could inspect certain letters of recommendation filed with the collector of taxes, and could, from that, ascertain whether, as a citizen, he could bring to the attention of the prosecutor of the pleas evidence to sustain an indictment.

The case at bar is entirely different from the case of *Ferry v. Williams*, for if, as the prosecutor contends, the ACT OF CONGRESS, of November 21st, 1918, made it illegal for a person to engage in the selling of intoxicating liquors, the prosecutor would need no such remedy for the revocation of the license, for, under the ACT OF CONGRESS above mentioned, commonly called the WAR-TIME PROHIBITION ACT, any person who did sell intoxicating liquors would be indicted.

There is a third class of cases, such as *Rehill v. East Newark*, 73 N. J. L. 220, where a citizen and taxpayer has the right to review by certiorari municipal expenditures and improvements. The case at bar does not come within this class of cases.

II.

The prosecutor is barred by laches.

The license in the case at bar was issued June 30th (C., p. 2). The application for license was made on June 9th (C., p. 8). It was advertised for five successive days, beginning with June 19th (C., p. 11) and it was not until two months after the granting of the license that notice of application for the writ of certiorari was served. Said notice was served August 30th, 1919 (C., p. 1).

It must be borne in mind that the life of the license on its face is one year, but as a fact, by virtue Chapter 158 of the Laws of 1919, is for an indeterminate term not longer than one year. Two months were allowed to lapse between the granting of the license and the application for a writ to review. Some time prior to the granting of the license, the application was duly advertised and the presumption is that it came to the attention of the prosecutor. The Court might bear in mind that it was very well known and duly noted at length, in the newspapers, that licenses to sell liquors would expire on the 30th of June, and that new licenses were granted on the first of July. Nevertheless, the prosecutor allowed two entire months to lapse before he applied for a writ.

The rule is well established that a writ of certiorari should not be granted where there is a delay in the application for the writ. In other words, the taxpayer applying for the writ must be vigilant and, of course, what is vigilance must be tested by the peculiar facts of each case.

Furthermore, if the lack of vigilance causes a detriment to one of the defendants the writ should not be granted. For these principles, see *Sturr v. Elmer*, 75 N. J. L. 443, and *Broadhead v. The Freeholders*, 72 N. J. L. 118. The detriment to the defendant Hayes, in this case, is this: Chapter 158 of the Laws of 1919 provides for a proportionate rebate of license fees. If the license were improperly issued, the defendant Hayes is equitably entitled to as much of a rebate as he can get, and the amount of rebate is necessarily cut down by the delay in applying for a writ to set the license aside.

III.

The Act of Congress of November 21, 1918, does not either expressly or by implication prohibit the issuance of a liquor license such as the one under review.

The pertinent part of the ACT OF CONGRESS is as follows:

“That after June thirtieth, nineteen hundred and nineteen, until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States, for the purpose of conserving the man power of the nation, and to increase efficiency in the

production of arms, munitions, ships, food and clothing for the army and navy, it shall be unlawful to sell for beverage purposes any distilled spirits, and during said time no distilled spirits held in bond shall be removed therefrom for beverage purposes except for export. * * * After June thirtieth, nineteen hundred and nineteen, until the conclusion of the present war and thereafter until the termination of demobilization, the date of which shall be determined and proclaimed by the President of the United States, no beer, wine or other *intoxicating* malt or vinous liquor shall be sold for beverage purposes except for export."

A.

From this it will be observed that there is no fixed period of time during which the sale of intoxicants is prohibited, and it may be that tomorrow or next week or next month the proclamation of the President will be published declaring the war at an end and demobilization to be complete, and thereupon, from that time forth, so far as this act is concerned, the sale of such liquors will be permitted under regulations, so far as New Jersey is concerned, precisely similar to those in effect before the act was passed. It is true, of course, that prohibition, by reason of the Eighteenth Amendment, will become effective in January of next year, but under the law of this State a license may be issued and advantage thereof taken by the licensee during the period, if any, between the President's proclamation aforesaid and the date upon which the constitutional amendment becomes effective. This is so even if but a single day should elapse between the two contingencies.

That the statement of law just made is so, will appear from an inspection of the act passed at the last session of our Legislature, known as Chapter 158 of the Laws of 1919, in which it is provided:

"Whenever the sale of intoxicating liquors for beverage purposes shall be generally prohibited by law, any person holding a license to sell such liquors may surrender such license and shall thereupon become entitled to a refund of such portion of the license fee paid by him as the unexpired term thereof at the time of such surrender bears to the whole period for which such license shall have been granted."

This act was passed in contemplation of the act of Congress mentioned above, and the Eighteenth Amendment, and, of course, can only be given a reasonable effect or any effect at all upon

the ground that the Legislature did not intend that its municipalities should be deprived of the right and authority to issue such licenses.

There is nothing strange in this if it be borne in mind that:

“The privileges secured by a license do not include the right to disregard any valid law. They are such only as can be exercised in conformity with and in subordination to the laws already in force. * * * A licensee takes his permit subject to the contingency that there may be changes in the laws adopted in the exercise of the police power.” 23 Cyc. 111.

Cases in point are:

Lambert v. State, 8 Mo. 492;

State v. Ands, 20 Mo. 214;

Hedges v. Titus, 47 Ind. 145;

Commonwealth v. Tabor, 138 Mass. 496.

From these authorities the rule is readily deducible that the licensing authority may issue the license, but the licensee takes the same subject to all valid regulations and laws that are or may be imposed, including, of course, the chance that all sales under the same may be utterly prohibited.

It cannot seriously be urged that the issuing of a license to sell liquors, as permitted by law, could be successfully interposed as a defense to a prosecution for a violation of any law, to meet which situation the act of 1919 quoted above has been passed, clearly showing the policy of the State to be in favor of the exercise of the rights under a license so long and so far as the same may be permissible and saving to the political subdivisions of the State, as much of the revenue as possible, by the granting of such licenses.

There can be no complaint upon the ground that the licenses issued cannot be enjoyed for the period of a full year, because the only limitation in that respect is contained in the so-called Bishops Act, P. L. 1906, page 199, at the foot of Section 1, where it is provided that no license shall be granted for a longer period than one year, but there is no prohibition against the issuing of a license for a part of a year, and, as a practical matter, the licensing district is faced with the situation produced by Chapter 280 of the Laws of 1913, whereby it is provided that no license of the kind under review shall be granted in a greater ratio than one such license to every five hundred of population, excepting that licenses in effect may be renewed. Consequently,

if the licenses were permitted to lapse until after the President's proclamation of demobilization, many licenses would be wiped out of existence forever, to the expense and detriment of the city's income from this source of money.

In the case at bar if the license were to be revoked the prosecutor would suffer substantial damage under the Laws of 1918, p. 972, since his place of business is within two hundred feet of a church.

B.

THE LICENSE DOES NOT IN TERMS CONFLICT WITH THE WAR-TIME PROHIBITION ACT.

In *Jacob Hoffman Brewing Company, Complainant, v. Richard J. McElligott, et als.*, Defendants, in the District Court of the United States for the Southern District of New York, Judge Augustus Hand construes the ACT. In this case on appeal, Circuit Judge Ward, speaking for the United States Circuit Court of Appeals for the Second Circuit, affirms Judge Hand in the following language:

"The sole ground upon which the United States Attorney, defendant in this case, is charged with transcending his authority is that he erroneously construes the statute in connection with the complainant's product, viz., as prohibiting the use of food products in the manufacture of any beer for beverage purposes after May 1, 1919, and the sale of such beer after June 30, 1919, *whereas the act properly construed prohibits only the manufacture and sale of such beer as is intoxicating*, which the complainants' beer, *containing not more than 2.75 per cent. of alcohol by weight*, is not."

"Although we concur in the construction of the statute by the Court below and assume that the United States Attorney will institute criminal proceedings, we do not think the Court had power to stay him by injunction from doing so." (Italics ours.)

The rule to be deduced from this is that liquors may be sold, providing they are not intoxicating. If the license of Hayes were to be revoked under our State laws he could not sell any liquors, whether intoxicating or not. The argument, therefore, that the WAR-TIME PROHIBITION ACT takes away the right to issue a liquor license reduces itself to an absurdity, for the reason that it would be held that an act which does not prohibit the sale of liquors not intoxicating revokes the right to sell

liquors not intoxicating, and this argument is true even though it be held that liquor containing more than 1/10th of 1% is intoxicating.

The Court cannot have failed to have noticed that "2.75 beer" has been sold and was deemed proper under WAR-TIME PROHIBITION. Some license from the municipality or its proper agent is necessary to authorize the sale of these liquors under our State laws, and it will be noted that the license in question is efficient for this purpose. See P. L. 1889, p. 77 (3 Comp. St. 1910, p. 2903) and A. L. 1918, p. 965. Attention is called to the title of these acts.

It licenses Thomas C. Hayes (C., p. 12) to sell spirituous, vinous, malt and brewed liquors. It does not say it licenses to sell intoxicating liquors. It does say, however, subject to the provisions of the laws regulating the sale of intoxicating and brewed liquors. If the law prohibits the sale of intoxicating liquors, yet, this license is efficacious for the purpose of giving its licensee, under the State laws, a right to sell spirituous, vinous, malt and brewed liquors, which are not intoxicating.

It is submitted that prohibiting the sale of intoxicating liquors is regulating the sale of the general class of spirituous, vinous, malt and brewed liquors.

C.

The Eighteenth Amendment does not become effective until January, 1920, and until then Congress has no general police power and no power whatever to prohibit the sale of intoxicating or non-intoxicating beverages in the several States, *Kidd v. Pearson*, 128 U. S. 1, 24; *Vance v. Vandercook Co.*, 170 U. S. 438, 444; *Keller v. United States*, 213 U. S. 128; *Hammer v. Dagenhart*, 247 U. S. 251, 273, 276. The State of New Jersey authorizes the business conducted by the defendant-appellant Hayes. The business is not only lawful, but so far as the State has acted, it may be presumed that it has found it to be desirable.

Congress by the War-Time Prohibition Act is practically attempting to destroy a lawful industry involving hundreds of millions of dollars of property value and the livelihood of thousands of persons, without any compensation whatever, and it is laying upon individuals affected thereby an enormous burden of uncompensated sacrifice of liberty and property which falls upon them alone of all the citizenry of the nation. The legisla-

tion in question is an interference with the right of every American to adopt and follow such lawful pursuit as he may see fit. Unless justified under the war power of Congress this interference with the defendant's business is in direct violation of his rights of liberty and property under the Fifth Amendment. *Allgeyer v. Louisiana*, 165 U. S. 578, 589; *Butchers Union Company v. Crescent City*, 111 U. S. 746, 756, 762.

The incidental war powers of Congress, so far as they may involve the denial of individual or property rights or the right of the States to local self government, can be exercised only in case of actual necessity and cannot be exercised merely because it may be convenient (*Legal Tender cases*, 12 Wall. 457, 543), or because a *de jure* state of war still obtains.

The clauses of the Constitution which guarantee individuals their fundamental rights and the States their rights to local self-government are not suspended during war time, but continue in force and effect notwithstanding the existence of a state of war. Where, therefore, it is attempted to exercise the war power to the detriment of other and equal constitutional rights, such detriment is permissible only in case of overriding necessity and actual emergency requiring that such equal rights shall temporarily yield for the safety and protection of the government which the Constitution creates and which all its provisions must be deemed to intend to uphold and preserve. The war powers granted by the Constitution do not abridge during war times the privileges and immunities guaranteed in and by the same instrument; the rights of property and liberty and local self-government are just as absolutely guaranteed by the Constitution as the war powers are therein granted. It is precisely because the exercise of the war powers almost invariably operates in derogation and abridgment of constitutional rights of equal obligation, that it is necessary to permit no denial of the latter if thereby no emergency or necessity reasonably warrants the temporary suppression or abridgement of the constitutional rights and privileges of the citizen.

The leading case of *Ex parte Milligan*, 4 Wall. 2, affords a striking and instructive illustration of the constitutional principles now involved.

It cannot be too strongly emphasized that the ruling and doctrine of the Milligan case have never been questioned. With entire uniformity the authorities have laid down and applied the rule of actual necessity or emergency as the test of the au-

thority to exercise any incidental war power in derogation of equal constitutional rights. *Mitchell v. Harmony*, 13 How. 115, 135; *Raymond v. Thomas*, 91 U. S. 712, 716; *Milligan v. Hovey*, 3 Biss. 13; *In re Egan*, 5 Blatchf. 319; *McLaughlin v. Green*, 50 Miss. 453; *Johnson v. Jones*, 44 Ill. 142, 154; *Griffin v. Wilcox*, 21 Ind. 370; *Nance & Mays v. Brown*, 71 W. Va. 519, 524; *United States v. Hicks*, 256 Fed. 707; 2 Willoughby on the Constitution, p. 1251. The rule was stated by Mr. Chief Justice Taney in *Mitchell v. Harmony*, *supra*, at p. 134, as follows:

“It is the emergency that gives the right (to exercise war power in derogation of private right), and the emergency must be shown to exist before the taking (of private property) can be justified.”

And in *Raymond v. Thomas*, *supra*, at p. 716, the Court said:

“It is an unbending rule of law, that the exercise of military power, where the rights of the citizen are concerned, shall never be pushed beyond what the exigency requires.”

It is, therefore, submitted that only an actual war necessity “creates the rule,” or “gives the right,” or makes such means “consistent with the letter and spirit of the Constitution”; in other words, that it is only actual war necessity or emergency that makes the taking of life, liberty or property under the incidental war powers conformable to due process of law.

The constitutionality of any statute, whether criminal or not, should be determined as of the time and in the light of the circumstances existing when it is sought to be enforced against the individual. The time of actual incidence is always the test, since the effect upon the accused is alone the concern of the courts. “A law may be within the pale of constitutional authority when originally passed, yet because of its future operations it may directly contravene the organic law.” *Castle v. Mason*, 91 Oh. St. 296, 203. “It is not to be denied that acts may be adapted to the exercise of lawful power, and appropriate to it, in seasons of exigency, which would be inappropriate at other times.” *Legal Tender Cases*, 12 Wall. 457, 540. The justiciable question always is whether or not the statute, sought to be applied in a particular case against a person complaining or defending, does or does not violate the constitutional rights of that person at the time its terms and provisions are attempted to be enforced. The rate cases furnish a striking example and analogy. See *Lincoln Gas & Electric Light Co. v. Lincoln*, 250

U. S. 256, 269; *Minnesota Rate Cases*, 230 U. S. 352, 473; *Missouri Rate Cases*, *ib.* 474, 508; *City of Knoxville v. Knoxville Water Co.*, 212 U. S. 1, 18; *Willcox v. Consolidated Gas Co.*, *ib.* 19, 54; and particularly *Municipal Gas Co. v. Public Service Com.*, 225 N. Y. 89, 95.

The Supreme Court itself has recognized this principle in quite similar cases. *Johnson v. Geraldts*, 234 U. S. 422, 446; *Perrin v. United States*, 232 U. S. 478, 486. In both of the cases cited the Court was considering the power of Congress to prohibit the sale of intoxicating liquor in so-called Indian country within a state. In the Perrin case the Court defined the limitations upon the power of Congress thus to legislate as follows:

“As the power is incident only to the presence of the Indians and their status as wards of the Government, it must be conceded that it does not go beyond what is reasonably essential to their protection, and that, to be effective, its exercise must not be purely arbitrary, but founded upon some reasonable basis. Thus, a prohibition like that now before us, if covering an entire State when there were only a few Indian wards in a single county, undoubtedly would be condemned as arbitrary. And a prohibition valid in the beginning doubtless would become inoperative when in regular course the Indians affected were completely emancipated from Federal guardianship and control. A different view in either case would involve an unjustifiable encroachment upon a power obviously residing in the State. * * *

“Of the claim that the prohibition is not expressly limited in its duration it is enough to observe that this objection cannot be of present avail. The conditions, justifying the prohibition, remain substantially the same as when it was adopted. The trust period has not expired, the tribal relation has not been dissolved, and the wardship of the Indians has not been terminated. See *Tiger v. Western Investment Co.*, 221 U. S. 286, 315; Act of May 8, 1906, 34 Stat. 182, c. 2348; *United States v. Pelican* (decided this day, ante, p. 442). The fact that the conditions may become so changed in the future as to render the prohibition inoperative affords no reason for condemning it now. Unless sooner repealed, it will continue in force, as long as the presence and status of the Indians sustain it as a Federal regulation.”

And in *Johnson v. Geraldts*, *supra*, the Court reiterated the foregoing doctrine and added:

“We do not mean to say that if it appeared that no considerable number of Indians remained wards of the Government within the territory in question, the courts

would not be justified in declaring that since the constitutional warrant for the restriction no longer existed the restriction must expire with it."

No emergency exists which would make the passage of the War-Time Prohibition Act at this time a lawful exercise of war power. Furthermore, the emergency which called into being the war power under which the War-Time Prohibition Act was passed has expired as appears by the proclamations of the President.

In his proclamation of January 30, 1919, he declared:

"And whereas the prohibition of the use of grain in the manufacture of beverages which are not intoxicating has been found by the President to be no longer essential in order to assure an adequate and continuous supply of food:

"Now, therefore, I do hereby modify the aforesaid proclamation made on the 16th day of September, 1918, to the extent of permitting the use of grain in the manufacture of beverages which are not intoxicating."

In the proclamation of March 4, he removed the remaining restrictions upon the manufacture of non-intoxicants, because:

"for the production from a cereal base, of a non-intoxicating beverage, which shall be nutritious and palatable, food products other than grains, of which there is now an abundant supply, but of which the use for such purposes is prohibited by the aforesaid proclamation of September 16, 1918, are required."

And in his message to Congress of May 20, 1919, the President declared:

"The demobilization of the military forces of the country has progressed to such a point that it seems to me entirely safe now to remove the ban upon the manufacture and sale of wines and beers, but I am advised that without further legislation I have not the legal authority to remove the present restrictions. I therefore recommend that the act approved November 21, 1918, entitled 'An act to enable the Secretary of Agriculture to carry out, during the fiscal year ending June 30, 1919, the purpose of the act entitled 'An Act to provide further for the national security and defense by stimulating agriculture and prohibiting the distribution of agricultural products,' and for other purposes' be amended or repealed in so far as it applies to wines and beers."

In his message to Congress of August 8, 1919, the President commented at length on the abundance of the country's food

supply; and in his recent message of October 27, 1919, he conclusively disposed of the whole claim of alleged existing war emergency warranting the continuance of the prohibitions contained in the act of November 21, 1918, which are so largely extended and intensified in title I of the Volstead Act by declaring and proclaiming in respect of that law that—

“It has to do with the enforcement of an act (*i. e.*, the act of November 21, 1918) which was passed by reason of the emergencies of the war and whose objects have been satisfied in the demobilization of the army and navy and whose repeal I have already sought at the hands of Congress. Where the purposes of particular legislation arising out of war emergency have been satisfied, sound public policy makes clear the reason and necessity for repeal.”

It is submitted that war-time prohibition ceased to be a lawful restraint upon the State and its citizens when the emergency passed.

In conclusion, the exercise of the incidental or war powers of Congress, to the detriment of other and equal constitutional rights, does not destroy such rights. During the emergency such rights must temporarily yield. How far depends on Congress.

Under the act in question Congress has prohibited the sale of distilled spirits for *beverage purposes except for export*; also the sale of beer, wine or other intoxicating malt or vinous liquor for *beverage purposes except for export*.

The right of the State to regulate or tax this business and the right of the citizen to engage in this lawful business at most must yield only to such extent necessary to comply with the act of Congress.

The act *prohibits sale for beverage purposes except for export*.

The license under review is to “Sell spirituous, vinous, malt and brewed liquors.” Under State laws license is necessary to sell at all—whether for beverage purposes, for export or any other purpose.

The right to pass excise laws is not destroyed nor the right to issue licenses thereunder. Sale for domestic use for beverage purposes is the only thing prohibited.

IV.

Even if the wartime prohibition act of November 21, 1918, is in terms in conflict with the license, the license should not fall.

A.

THE LICENSE IS NOT A DEFENSE TO PROSECUTION FOR A VIOLATION OF THE FEDERAL CRIMINAL LAWS. 25 CYC. 624.

Neither a Federal nor a Municipal License authorize the licensee to violate the criminal laws of the State, nor does a State law entitle a licensee to pursue his business in violation of the criminal laws of the State or in violation of the ordinances of the city.

See also to the same effect: *Commonwealth Company v. Keenan*, 11 Allen 262; *Commonwealth v. Holbrook*, 10 Allen 200; *Commonwealth v. Ellis*, 158 Mass. 55; *Commonwealth v. Lagoro*, 141 Mass. 81; *Commonwealth v. Fenton*, 139 Mass. 195.

In *Costigan v. Pa. R. R. Company*, 54 N. J. L. 233, it was held by the Supreme Court, Mr. Justice Dupue writing the opinion, that where a railroad company was authorized by the State Legislature, to put down an embankment, nevertheless, if this construction causes injury to an adjacent owner the railroad company was liable for damages.

In *Underwen v. The State*, 73 N. J. L. 529, it is held, Mr. Justice Reed writing the opinion and discussing the authorities, that though there be a license given to run automobiles or trolley cars, nevertheless, proper regulations may be made concerning the exercise of a right conferred by the license and in prosecution for the violation of these regulations the license is not a defense.

The purport of these decisions is this:

Since a license is not a defense to the prosecution of a violation of an act which is unlawful under some other proper law, the license of necessity is not in conflict with this other law. That is, the license may legally be granted or, in other words, the passing of a law making illegal in some respects or in all respects, what the license purports to grant the right to do, does not take away the right to grant a license.

It must be borne in mind that in these cases the licenses given by one branch of the Government and the law making illegal

the act is the law of another branch of the Government. It is sufficient for the purposes of this law that the license be not a defense. Whether a license should or not be granted is the concern only of that part of the Government which grants it.

B.

SINCE THE LICENSE IN THE CASE AT BAR IS ONE FOR REVENUE, UNDER THE DECISIONS OF THE UNITED STATES SUPREME COURT, THE RIGHT TO ISSUE IT IS NOT REVOKED BY AN ACT WHICH PROHIBITS THE LICENSED ACT.

Under the act to regulate the sale of spirituous, vinous, malt and brewed liquors (P. L. 1889, p. 77), 3 Compiled Statutes, 1910, p. 2903, as amended by the Laws of 1918, p. 965, etc., the license fee ranges from \$100 to \$500 a minimum for towns of certain population, with a discretion given for appropriate municipal authorities to demand a larger license fee.

It is submitted that this license fee is one for revenue; that it is a tax.

In *Burlington v. Putnam Ins. Co.*, 31 Ia. 102, it is held that the amount of the license fee is the test whether the license is for revenue or regulation.

Mr. Justice Depue, in *Prosecutor v. Hoboken*, 41 N. J. L. 71, on page 81 says:

“The distinction between the power to license, as a police regulation, and the same power when conferred for revenue purposes, is of the utmost importance. *If the power be granted with a view to revenue, the amount of the tax, if not limited by the charter, is left to the discretion and judgment of the municipal authorities; but if it be given as a police power for regulation merely, a much narrower construction is adopted; the power must then be exercised as a means of regulation, and cannot be used as a source of revenue. Cooley on Taxation, 408; Cooley on Const. Lim., 201.*” (Italics ours.)

In *Freeholders of Essex v. Barber*, 7 N. J. L. 78, Mr. Justice Ford discusses the licensing of inn-keepers as to whether the license is a regulatory one or one for revenue, and points out that under the INNS and TAVERNS' ACT of 1797 the license of inn-keepers was a tax.

In the License Tax Cases, 5 Wallace 462, 18 Lawyers' Edition 497, it is held by the Supreme Court of the United States that the law of the United States imposing a special tax for selling of lottery tickets and for the non-payment of which an indictment was found, is valid, and not unconstitutional, although such selling was prohibited by the State law. The same was held true as to the provisions of the entire revenue acts relating to licenses for selling liquors.

In *Pervear v. Commonwealth of Massachusetts*, 5 Wallace 475, 18 Lawyers' Edition 608, it was held that a law of the State taxing or prohibiting business already taxed by Congress is not unconstitutional.

The exact question at bar is raised in the License Tax Cases by the case of *Massachusetts*, Chief Justice Chase, writing the opinion for the Supreme Court, says:

"In the case from Massachusetts, the defendant was indicted for carrying on the business of retailing liquors without license, to which indictment there was a demurrer. A statement of facts was agreed on to the effect that the defendant was a retail dealer, as charged, and that this business was prohibited by the laws of the commonwealth, and the division of opinion occurred on the question presented on the pleadings, and this agreed statement."

The conclusions of the Supreme Court are given on page 502 of the Lawyers' Edition:

"Upon the whole we conclude—

1. That licenses under the act of 1864, and the amendatory acts, conveyed to the licensee no authority to carry on the licensed business within a State.

2. That the requirement of payment for such licenses is only a mode of imposing taxes on the licensed business, and that the prohibition, under penalties, against carrying on the business without license, is only a mode of enforcing the payment of such taxes.

3. That the provisions of the acts of Congress requiring such licenses, and imposing penalties for not taking out and paying for them, are not contrary to the Constitution or to public policy.

4. That the provisions in the act of 1866 for the imposing of special taxes, in lieu of requiring payment for licenses, removes whatever ambiguity existed in the previous laws, and are in harmony with the Constitution and public policy.

5. That the recognition by the acts of Congress of the power and right of the States to tax, control or regulate any business carried on within its limits, is entirely consistent with an intention on the part of Congress to tax such business for national purposes."

V.

The issuing of the license under review is not affected by the Eighteenth Amendment to the United States Constitution.

Inasmuch as this amendment will not become operative until January of 1920, no argument would appear to be necessary other than the argument just made under Point I, affecting the implied restraint upon the district's right to issue the license.

Respectmully submitted,

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Examples

County of Essex, New Jersey

IN SENATE
January 11, 1911

REPORT
OF THE
COMMISSIONERS OF THE
TREASURY

FOR RESPONDENT ANDREW MURRAY

IN SENATE
January 11, 1911

IN SENATE
January 11, 1911

Examples

IN SENATE
January 11, 1911

New Jersey State

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