

NEW JERSEY
Court of Errors and Appeals

HUGH MEEHAN,
Plaintiff in Error,
vs.
THE BOARD OF EXCISE COMMISSIONERS
OF JERSEY CITY ET AL.,
Defendants in Error. } On Error.

Brief of Defendants in Error.

Chapter 114, Laws of 1906, entitled "A supplement to an act entitled 'An act to regulate the sale of spirituous, vinous, malt and brewed liquors,' and to repeal an act entitled 'An act to regulate the sale of intoxicating and brewed liquors, passed March seventh, one thousand eight hundred and eighty-eight,' approved March twentieth, one thousand eight hundred and eighty-nine," aims to regulate the sale of intoxicating liquors in this State.

The plaintiff in error is the holder of a license granted by the Board of Excise Commissioners of Jersey City to sell at retail spirituous, vinous, malt and brewed liquors at No. 213 Washington street, subject to the provisions of the laws regulating the sale of intoxicating and brewed liquors (*Exhibit B*, p. 12).

He complains that the resolution passed by said The Board of Excise Commissioners on July 12, 1906, (*Exhibit A*; p. 11), compels the exposure of the interior of his bar-room on days when the sale of intoxicating liquors is prohibited by law (Sundays and election day), and that it is discriminating and imposes more restrictions upon the plaintiff (a saloon-keeper), one class of dealers than upon another class of dealers (keepers of inns, hotels, restaurants, &c.), in that he must, under this resolution and in compliance therewith, expose the entire interior of his bar-room to view from the street on the days when the sale of intoxicating liquors is prohibited, while the other class of persons, to wit, keepers of inns, hotels, restaurants, &c., need not do so.

POINT I.

Such classification of all dealers similarly situated is within the legislative authority.

Am. & Eng. Ency. of Law (2 Ed.), Vol. 17.

"Intoxicating Liquors," p. 208, 209.

Com'rs vs. Casey, 134 Mass., p. 194.

Met. Board of Excise vs. Barrie, 34 N. Y. Rept., p. 657.

State vs. Corron et al. (N. H.), 62 Atl., p. 1044.

POINT II.

The act is constitutional; it regulates the traffic of an unlawful business.

The right to regulate the sale of intoxicating liquors 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.

Plaintiff's license from the Jersey City Excise Board is no contract, but is a mere permission to plaintiff to engage in an unlawful business.

Cooley's Constitutional Limitations, 7th Ed.,
p. 845.

Cowley vs. Christensen, 137 U. S., p. 86.

Robinson vs. Haug, 71 Mich., p. 38.

Hoboken vs. Goodman, 68 N. J. L., p. 217.

Crocker vs. Board of Excise of Camden, 63
Atl. Rep., p. 901.

Paul vs. Gloucester City, 21 Vr., p. 586.

State Sanford vs. Morris, 7 Vr., p. 72.

Russell Police Powers of State, p. 27.

POINT III.

Chapter 114, Laws of 1906, is not in violation of the fourteenth amendment of the Constitution of the United States.

(a) No fundamental right to which the plaintiff is entitled has been invaded by this act, or by the resolution passed by said Board.

(b) His license to sell intoxicating liquors gave him no privileges or immunities.

(c) Nor is his license a property right, of which he is deprived.

(d) Nor is he deprived of the legal protection of the law. All other persons similarly engaged in the retail sale of liquors as a saloon-keeper are subject to the regulations of which he complains. This act is a *police regulation*, enacted under the police powers of this State; it regulates the sale of intoxicating drink, and although its scope is limited, yet, in its application, it affects all saloon-keepers alike, and is not interdicted by the fourteenth amendment.

Soon Hing vs. Crowley, 113 U. S. 703; 5 Sup.
Ct. 730; 28 L. E. 1145.

Barbier vs. Connolly, 113 U. S. 27-32, 5 Sup.
Ct. 357; 28 L. L. 923.

Hayes vs. State, 120 U. S. 69; 7 Sup. Ct. 350;
30 L. E. 578.

Jones vs. Brim, 165 U. S. 180; 17 Sup. Ct. 282; 41 L. E. 677.

Hoboken vs. Goodman, 39 Vr. 217; 68 N. J. L.

POINT IV.

The Excise Board of Jersey City was not dependent upon the powers granted to said Board by the Legislature under the laws of 1906, but aside from the powers so granted to it by Chapter 114 of the Laws of 1906, the Excise Board of Jersey City, under the Act of 1903 (P. L. 369), creating said board, and under the fifth section of said act entitled "An act concerning cities of the first class in this state, constituting municipal board of excise commissioners therein and defining the powers and duties of such boards, &c.," possessed "the sole power in such cities to license and regulate inns, taverns, restaurants, beer saloons and all places where any kind of vinous, malt, brewed, spirituous or other intoxicating liquor is sold.

The adoption of this resolution was but a *regulation* of plaintiff's business within the scope of the power possessed by said board.

Croker vs. Board of Excise of Camden, 63 Atl. Rep., p. 901.

POINT V.

Section 5 of Chapter 114, Act of 1906, can be severed from the rest of the act; it is unconnected with the other provisions thereof, and can be declared void without affecting the rest of the act.

McArdle vs. Jersey City, 66 N. J. Law (37 Vr.), p. 590.

State vs. Davis, 72 N. J. L. (43 Vr.), p. 345.

It is respectfully submitted that the writ of error should be dismissed.

GEORGE L. RECORD,
PETER BACKES,

*Attorneys for and of Counsel with
the Defendants in Error.*

New Jersey Court of Errors and Appeals.

HUGH MEEHAN, Prosecutor, Plaintiff in error. vs. BOARD OF EXCISE COMMISSIONERS OF JERSEY CITY, et al., Defendants below and in error.	} On Certiorari. On Error to Supreme Court.
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BRIEF OF R. V. LINDABURY ON BEHALF OF PLAINTIFF IN ERROR.

This writ of error presents for determination the constitutionality of Section 4 of an act of the legislature entitled "A Supplement to an act entitled 'An act to regulate the sale of spirituous, vinous, malt and brewed liquors, and to repeal an act entitled, "An act to regulate the sale of intoxicating and brewed liquors," passed March 7, 1888,' approved March 20, 1889," which act was approved April 13, 1906.

The section in question reads as follows:

"4. Section eleven of the act to which this act is a supplement, and which was amended by an act approved March eighth, nineteen hundred and five, is hereby further amended so as to read as follows:

"11. No license shall be granted to sell spirituous, vinous, malt or brewed liquors by less measure than one quart in any store, shop, apartment, or place in which a grocery or other mercantile business (excepting the keeping of a restaurant, or the sale of tobacco and cigars by re-

tail) is carried on, or in any new place within two hundred feet of the curtilage of a church edifice, schoolhouse or armory, measured between the nearest point of the same and nearest point of the building wherein such liquors, or any of them, are intended to be sold; or if not in an inn and tavern, or a hotel having at least ten spare rooms and beds for the accommodation of boarders transient and travelers, or a restaurant where the business of furnishing meals to the public for compensation is regularly carried on, and which restaurant is conducted and operated on more than one floor or story of the building where such business is carried on, or a picnic or recreation ground, or a building with a bowling alley, or a building entirely occupied by a regularly organized club or association, in any place, except in a bar or business room, upon the ground floor or basement of a building on a public street.

“If not in an inn and tavern, or a hotel having at least ten spare rooms and beds for the accommodation of boarders, transients and travelers, or a restaurant where the business of furnishing meals to the public, for compensation, is regularly carried on, and which restaurant is conducted and operated on more than one floor or story of the building where such business is carried on, or a picnic or recreation ground, or a building with a bowling alley, or a building entirely occupied by a regularly organized club or association, no spirituous, vinous, malt, brewed, or other intoxicating liquors shall be sold or served under such license in any room, except in such bar or business room, and the clear interior view of the whole of said bar or business room (except for toilet purposes) shall be in no way obstructed by a screen, non-transparent glass, shade, blind, door, shutter, or merchandise, or any other article placed in any of said rooms. The court, excise board, or other board or authority having power by law to grant licenses in any

municipality of this state, if said license is not in an inn and tavern, or a hotel having at least ten spare rooms and beds for the accommodation of boarders, transients and travelers, or a restaurant where the business of furnishing meals to the public, for compensation, is regularly carried on, and which restaurant is conducted and operated on more than one floor or story of the building where such business is carried on, or a picnic or recreation ground, or a building with a bowling alley, or in a building entirely occupied by a regularly organized club or association shall upon the days and times when the sale of liquors or other intoxicating drinks is by law prohibited to be sold, may at any or all other times, require that the entire interior of such bar or business room in which such liquors and other intoxicating drinks are sold and served shall, during the entire prohibited time, or may at any or all other times, as may be required by such authority, be open to full view from the public street; and upon the making of an order to that effect by the court, excise board, or other authority having power to grant such licenses, a full view of the entire interior of such bars or business rooms in such municipality shall not thereafter during the times so specified, as aforesaid, be obstructed from the public street by the use of non-transparent glass, or of a shade, blind, shutter, screen, merchandise or any other article placed within or without the building in which such room is located.

“For a violation of any of the provisions of this section the license held by the person or persons so offending shall be forfeited in the manner provided by law, and any person or persons, whether licensed or unlicensed engaged in carrying on the sale of liquors, who, directly or indirectly, violates the provisions of this section shall be guilty of the offense of keeping a disorderly house.”

Briefly, the facts in the case are as follows: On July 12, 1906, the Board of Excise Commissioners of Jersey City made and adopted the following resolution:

“Resolved, That from and after the adoption of this rule, the interior of the bar, or business room, in which liquors and other intoxicating drinks are sold and served under any license granted by this Board, shall, during such time as such sales are prohibited by law, be open to full view from the public street; Provided, however, this rule shall have no application to such places as are exempt from its operation under the provisions of the said law.”

At the time the said resolution was adopted the plaintiff in error had been engaged in the retail liquor business at No. 213 Washington Street, Jersey City, for four years, during all of which time he had been licensed by the said Board to keep and maintain a restaurant and to sell at retail spirituous, vinous, malt and brewed liquors. The last of these licenses extended from July 1, 1906, to July 1, 1907, and at the time of the passage of the said resolution the plaintiff in error was under its authority still maintaining a bar room and restaurant at the location named. During all of the time mentioned there were wooden and glass screens in the show windows on the store floor, and non-transparent glass, such as were commonly used in connection with the retail liquor business in Jersey City, in the doors leading from the bar to the street. The windows and doors of the restaurant were also fitted with curtains, all of which had been maintained in connection with the bar during all of the time mentioned. During the same period the plaintiff in error had maintained on the restaurant floor a partition dividing his restaurant

into a front and rear room and had also maintained an additional room in back of the rear room for cooking purposes. These latter rooms were connected with the front bar room by ordinary doors. In connection with his saloon business, and in the front bar room, there was a cigar case and counter and a lunch counter. During all of the said time the plaintiff in error had at that location sold at retail spirituous, vinous, malt and brewed liquors, and had also served to his customers cooked food, part of which was cooked in the back room above referred to, and served both in the front bar room and in the rear bar room. Since the making and adoption of the resolution above quoted, the police department of Jersey City have notified the plaintiff in error and others holding similar licenses that the interiors of their bars must be kept open to full view from the public street at all times when the sale of liquors is prohibited by law, by removing all screens and other obstructions placed in any of the said rooms. These notifications, however, do not apply to or affect any place licensed as an inn or tavern, or a hotel having at least ten spare rooms and beds for the accommodation of boarders or travelers, or a restaurant where the business of furnishing meals to the public for compensation is regularly carried on, and which restaurant is conducted and operated on more than one floor or story of the building where such business is carried on, or a picnic or recreation ground, or a building with a bowling alley, or a building entirely occupied by a regularly organized club or association. With a few exceptions licenses granted by the Excise Board of Jersey City to sell liquor at retail, are known as restaurant licenses, and no licenses have been granted to any one in the said city to keep and maintain a hotel of ten rooms or

more of the character and description referred to in the act in question. The plaintiff in error does not keep an inn or tavern.

A writ of certiorari having issued out of the supreme court directed to the Mayor and Aldermen of the city of Jersey City and the Board of Excise Commissioners of Jersey City, commanding them to certify and return the said resolution and all proceedings in connection therewith to the justices of the said court, and reasons having been duly filed and the return contained on pp. 6-13 of the "State of Case" having been duly made and argument had thereon, judgment resulted in favor of the defendant in error. Upon behalf of the plaintiff in error it is respectfully submitted that the said judgment should be reversed for the reasons hereinafter stated.

That the sale of liquor is subject to legislative regulation under the police power of the state is of course conceded. That such legislation must not however conflict with the provisions of either the Federal or state constitution is equally well settled. This principle is both recognized and well stated in the opinion of Mr. Justice Fort in this case in the following language:

"It is not our intention, of course, to affirm that, under the police power, notwithstanding the fourteenth amendment, the state may, by arbitrary, fanciful or illusory action, discriminate between citizens holding licenses. After the license is granted, all who are similarly situated are entitled to equal privileges as licensees. Class legislation, whether within or without the police power, discriminating against some and favoring others, is prohibited."

The same rule has been recognized by this court in *Paul vs. Gloucester County*, 21 Vroom, 585, 592, and in many other cases. That it has been adopted

in the Federal courts, and generally in the courts of the other states, may be seen from *Barbier vs. Connolly*, 113 U. S., 27 and the large number of cases cited on page 937 of Volume 22 of the American & English Encyclopedia of Law.

The question presented for determination therefore is as to whether the section of the act of 1906 under review conforms to the requirements of both the State and Federal Constitutions. I respectfully submit that it conforms to neither.

I.

IT CONFLICTS WITH THE PROVISION OF THE STATE CONSTITUTION PROHIBITING THE LEGISLATURE FROM PASSING PRIVATE, LOCAL OR SPECIAL LAWS REGULATING THE INTERNAL AFFAIRS OF MUNICIPALITIES.

This provision is contained in Article 4, Section 7, paragraph 11 of the Constitution, and is as follows:

“The Legislature shall not pass private, local or special laws in any of the following enumerated cases, that is to say: * * * ; regulating the internal affairs of towns and counties; appointing local officers or commissions to regulate municipal affairs.”

That the section of the act of 1906 under review constitutes an attempt to regulate the internal affairs of municipalities seems to be settled by the decision of this court in *Paul vs. Gloucester County, supra*, and that of the Supreme Court in *Berry vs. Cramer*, 29 Vroom, 278.

That it provides for a classification of the various places in which the sale of liquor is conducted entirely unlike that provided in any of the earlier legislation with regard to the same business will not be denied and will readily appear from an examination of the earlier acts.

The act (Gen. Stat. p. 1810), to which the act of April 13, 1906, is a supplement, classifies those selling liquor upon the basis of the population of the locality in which they are to sell, and this classification has been decided by this court to be a natural and appropriate one and therefore valid. *Paul vs. Gloucester County*, supra.

The same act also distinguishes between those selling liquor in small quantities (less than one quart) and those selling liquor in larger quantities, by charging a higher license in the former case than in the latter, and by making it an offense to permit liquor to be drunk on the premises where sold in any quantity from one quart to five gallons.

Until the passage of the act of April 13, 1906, persons licensed to sell liquor in smaller quantities than one quart, were classified solely upon the basis of the population of the municipality in which they were authorized to sell. With the sole exception of the changes made in section 11, all of the provisions and restrictions of the act still operate equally and uniformly upon all those engaged in the liquor business and the only classification attempted to be made is based upon population or upon the quantities in which liquor is sold.

Section 11, however, as amended by section 4 of the act of 1906 divides those engaged in selling liquor in quantities of less than one quart into two distinct classes, upon one of which is imposed restrictions from which the other is left entirely free.

The first of the two classes of liquor dealers created by this section includes all those selling (1) in an inn or tavern; (2) in a hotel having at least ten spare rooms and beds for the accommodation of boarders, transients and travelers; (3) in a restaurant where the business of furnishing meals to the public for

compensation is regularly carried on, and which restaurant is conducted and operated on more than one floor or story of the building where said business is carried on; (4) in a picnic or recreation ground; (5) in a building with a bowling alley; (6) in a building entirely occupied by a regularly organized club or association.

The second of the two classes created by it embraces all other dealers selling liquor in smaller quantities than one quart in any place not included in the first class where it is lawful to sell within the state.

Both of these classes pay the same license fees but the following restrictions are imposed upon the second class which are not placed upon the first, namely: (1) the place of business must be in a building upon a public street; (2) no liquor can be sold except in a bar or business room upon the ground floor or basement of the said building; (3) a clear interior view of the whole of said bar or business room (except the part used for toilet purposes) unobstructed by a screen, non-transparent glass, shade, blind, door, shutter, or merchandise, or any other article placed in any of said rooms must all times be maintained; (4) the court, or excise board, or other board or authority having power by law to grant licenses shall upon the days and times when the sale of intoxicating drinks is prohibited, and may at any or all other times, require that the entire interior of such bar or business room be open to full view from the public street.

The restrictions thus imposed upon the class of liquor dealers in which the plaintiff in error is placed by this legislation are onerous. While all the other dealers with whom they must compete in business are left entirely free to locate as and where they will, they alone are restricted to carrying on business in one room on the ground floor or basement of a build-

ing upon a public street. While all the other liquor dealers may conduct their business as they choose, subject only to the regulations always imposed in connection with it, they are forbidden to carry on the same business unless the interior view of the one room in which it is permitted to be conducted at all is totally unobstructed and the room entirely undivided. To this restriction is added still another—that the licensing authority may require that at all times an unobstructed view may be had of all parts of this one room from the public street on which it is located. By force of this legislation anyone carrying on the business of selling liquor or malt beverages at retail in an inn or tavern, or a hotel having ten spare rooms and beds for the accommodation of guests, or a restaurant conducted on more than one floor, or a picnic or recreation ground, or a building with a bowling alley, or a building entirely occupied by a club, may continue to do so wherever and as he chooses without any restrictions except those uniformly imposed upon all retail liquor dealers in the state, while one conducting exactly the same business in a hotel having less than ten spare rooms, or in a restaurant conducted on one floor, or in a building not connected with a bowling alley, can only do so subject to the four additional restrictions above pointed out.

What reasonable or substantial basis can there be for such a discrimination among persons carrying on the same business? How can it be said that it is reasonable to require the plaintiff in error to take down and abandon the usual fixtures in his place of business, which are of an elaborate and permanent character, while another liquor dealer, whose place may be next door to his, is permitted to retain and use the same kind of fixtures simply because he has a bowling alley attached to his restaurant or saloon?

How can a classification be other than arbitrary and unreasonable which requires the plaintiff in error at all times not only to keep the interior view of his place entirely unobstructed, but at the dictation of the licensing authority to also have the entire view thereof from the street unobstructed, because his restaurant is carried on on only one floor, or there is no bowling alley attached to it, while his competitor across the street can still subdivide his place of business as he will and always prevent any view whatever being had thereof from the same street simply because in his restaurant meals are served on more than one floor, or because there is a bowling alley attached to it?

In determining whether or not the classification thus made is arbitrary and illusory, or appropriate and natural, it is of course necessary to consider the purpose of the legislation by which it has been effected. It is a matter of common knowledge that this purpose was twofold; first, to prevent the sale of liquor on Sundays and election days contrary to law, and, second, to at other times prevent the unrestrained sale of liquor in small quantities to be drunk upon the premises. That legislation, which will tend to accomplish these objects in all places where liquor is ordinarily sold to be drunk upon the premises, would be not only proper but desirable, I do not question. Upon behalf of the plaintiff in error I submit, however, that the legislation under review is not fairly designed to accomplish either of these results because it bears harshly and unreasonably upon only a portion of those engaged in the business sought to be regulated, while leaving all others engaged in the same business free from restriction.

And, first, as to the Sunday evil. Throughout all the country districts of the state practically the only

licenses granted are to inns and taverns. These inns and taverns differ in no substantial way from the ordinary city saloon. The mere fact that each of them is required to have a bedroom or two, or a stable connected therewith is of no importance, for the business to which they are devoted is the selling of liquor in small quantities to be consumed in the bar room as is done in the ordinary city saloon. The accommodation of travelers and guests, except in the bar room is of infrequent occurrence. To all practical intents and purposes the inn and tavern has for generations been merely the saloon of the country districts. The law has always prohibited the sale of liquor on Sunday in the country as well as in the city—in inns and taverns as well as in other licensed places. Why then should additional legislation, intended to make the law more effective, not apply to inns and taverns? Is there anyone who will say that any reason exists for preventing violations of the Sunday excise law in the cities which does not apply equally to the smaller municipalities? No one will hazard a suggestion that this law has been violated more generally in the cities than in other parts of the state. Nobody will claim that the enforcement of it in the cities is of more importance than its enforcement elsewhere in the state. How then can section 4 of the act of 1906, being entirely ineffective except in the cities, be other than the special legislation prohibited by the constitution.

That it is such legislation is if possible even more apparent from a consideration of the situation created by it in the cities of the state. Many of the saloons in the cities—a majority of them, if I mistake not, in some cities even as large as Elizabeth—are licensed as inns and taverns, while the others have saloon, restaurant or hotel licenses. There are no

points of difference in the places licensed except in the character of the name given to the license issued. To all appearances and for all practical purposes, almost without exception, each of them is an ordinary saloon. The same law makes it illegal for the keeper of any of them to sell liquor on Sunday. The violation of this law by any one of them is as detrimental to the public good as its violation by another of them. Yet the safeguards created by the act of 1906 against the violation of the Sunday law, while applying to places licensed as saloons and restaurants, have no application to those licensed as inns and taverns or hotels. By its provisions one saloon keeper is required to have his premises open to the public view from the street on Sunday, while another saloon keeper is not required to do so because he holds an inn and tavern license. Can it be said that legislation which brings about this result is not special and therefore unconstitutional?

There are many other things which might be pointed out as illustrative of the arbitrary and illusory classification attempted by this law. For instance, there is surely no reason why a saloon keeper, having a bowling alley attached to his saloon, should not be required to permit the same view of his bar room from the public street on Sundays as a saloon keeper who has no bowling alley connected with his premises, but in one case the view is now required, while in the other it is not. Nor can there be any valid reason why a restaurant keeper, who carries on business on more than one floor, should be permitted to do so on Sunday behind screened doors, while the other restaurant keepers should be required to permit an unobstructed view of their premises, but the act of 1906 makes this the law. Legislation which is directed against the unlawful selling of

liquor on Sunday should apply equally to all places where experience has shown that the excise laws are likely to be violated on that day, and legislation which tends to prevent the sale and drinking of liquor on Sunday in one class of saloons alone, and in no way applies to any other saloons, is, I submit, not only arbitrary and unreasonable, but must fail to lessen the evil intended to be remedied.

In even a more marked degree the legislation under review is unfair and unreasonable in so far as it attempts to lessen the unrestrained sale of liquor at other than the prohibited times. Keepers of inns and taverns and of all other places where bar rooms are maintained, with the single exception of the class in which the plaintiff in error is placed by the act of 1906 are by its provisions left entirely free to fit up and maintain their bar rooms as they may desire. They may divide or sub-divided their business premises to suit their own convenience, or the wishes or comforts of their customers. The interior thereof may be fitted with such screens, doors and other fixtures and sub-divided as may be desired. No one has authority at any time to compel any view thereof from the street. Subject only to the regulations which have always prevailed they may carry on their business outside of the prohibited times as they will. Whoever has a license for an inn or tavern, or conducts a restaurant business on more than one floor, or has a bowling alley attached to his saloon, is still in possession of all of the privileges which he had before the act was passed. These privileges enable the saloon keepers of the favored class to secure the custom which the plaintiff in error and other saloon keepers, upon whom the restrictive provisions of the act bear, have heretofore enjoyed. The retaining of them by one class and the taking of them

away from the other in no way tends to lessen the amount of liquor consumed. What possible support can there be for an act which provides that one saloon keeper must do away with all interior screens and rooms and keep the entire view of his bar room from the street unobstructed even during the hours when he is permitted to carry on business, while another saloon keeper similarly situated may carry on his business in as many rooms as he chooses, each of which may be fitted up and divided as he desires, and of none of which a view from the street is required to be had? Throughout the country districts and in many of the city saloons no attempt is made by the act to in any way lessen the unrestrained sale of liquor. The restrictive provisions are limited to one class of dealers alone with the sole result that their business is injured while that of the exempted classes is benefited. That there is reasonable ground to support the restrictions in one case and not in the other is, I submit, not capable of proof.

In considering this legislation account should also be taken of the effect it will surely have if sustained through the establishment of hotels of the kind which have been inflicted upon the State of New York by its notorious Raines Law. Here, as there, the exemption made in favor of hotels is certain to result in the establishment and maintenance of many so-called hotels which will bring in their train evils much worse than the one sought to be lessened and also add to it.

That the classification of those engaged in the liquor business attempted to be made by Section 4 of the act of 1906 cannot be supported is, I submit, clear under the authorities.

In *Van Ripper vs. Parsons*, 11 Vroom, p. 1, Chief Justice Beasley said:

“My theory is that if a set of objects be fairly classified, a law embracing them will be a general one and in all respects unobjectionable; but undoubtedly, if the classification be illusive, being contrived with a view of escaping the constitutional restriction, it can lend no support to the legislation connected with it. As, for example, a statute declaring that all cities containing a population over a certain number shall have a given number of voting places, and all cities containing a lesser number shall have a prescribed lesser number, would be, to my mind, obviously legal, because the classes of persons thus distinguished from each other would naturally stand upon a different footing with respect to the particular subject to which such legislation related; but if a law, based on the same classifications should provide that the former of such classes should have a certain system of laying out streets, and the latter a different system, such a classification would be clearly illusive, inasmuch as the law thus enacted would bear no affinity to the qualities or attributes forming the basis of classification. Interdicted local and special laws are all those that rest on a false or deficient classification; their vice is that they do not embrace all the class to which they are naturally related; they create preference and establish inequalities; they apply to persons, things or places possessed of certain qualities or situations, and exclude from their effect other persons, things or places which are not dissimilar in these respects.”

In *Alexander vs. The City of Elizabeth*, 27 Vroom, p. 71, in which the question as to the classification of race courses in the state was discussed, it is said:

“In passing upon the constitutionality of such discriminative restrictive acts and the classifications thereby created, the substance of the legislative provision is regarded, giving only secondary consideration to the form in which it is expressed; and while, under the clause of the

constitution just cited, objects may be classified for the purposes of legislation, such classification must be founded upon some natural or substantial difference, and such classification must include all the objects to which the legislation enacted for the particular class is appropriate or necessary."

In *Budd vs. Hancock, Comptroller*, 37 Vroom, p. 133, the court held:

"The law is special in a constitutional sense when, by force of an inherent limitation, it arbitrarily separates some persons, places or things from others, upon which, but for such limitation, it would operate."

In *Lewis vs. Jersey City*, 37 Vroom, 582, Chief Justice Depue, in defining legislation which will comply with the constitutional provision now relied on, said:

"It must embrace all and exclude none, whose conditions and wants render such legislation equally appropriate to them as a class."

In *Randolph vs. Wood*, 20 Vroom, p. 85, the court said:

"Disclaiming all intent to further define what is a general law, it will serve the present purpose to say that under these adjudications a law is to be regarded as general when its provisions apply to all objects of legislation, distinguished alike by qualities and attributes which necessitates the legislation, or to which the enactment has manifest relation. Such a law must embrace all and exclude none whose condition and wants render such legislation equally necessary or appropriate to them as a class."

In *Long Branch vs. Sloane*, 20 Vroom, p. 356, the court said:

"Since the adoption of this clause, its meaning in this respect has been settled by a great unanimity of opinion in numerous cases. * * *
A determination whether or not a given law is general will proceed from a consideration both

of the purpose of the act and the objects on which it is intended to operate. If these objects are distinguished from others by characteristics evincing a peculiar relation to the legislative purpose, and showing the legislation to be reasonably appropriate to the former and inappropriate to the latter, the objects will be considered, as respects such legislation, to be a class by themselves, and legislation affecting such a class to be general. But if the characteristics used to distinguish the objects to which the legislation applies from others are not germane to the legislative purpose, or do not indicate some reasonable appropriateness in its application, or if objects with similar characteristics and like relation to the legislative purpose have been excluded from the operation of the law, then the classification would be incomplete and faulty and the legislation not general, but local or special."

In *Canfield vs. Davies*, 32 Vroom, p. 26, the court said:

"The rule is settled in this state that a law, in order to be general, must embrace an entire class of objects; that if it deals with municipalities they must either comprise what by common consent are regarded as a class, such as all cities or all townships, or they must differ from other municipalities in some peculiar characteristic to which the law relates, and which is important enough to afford a reasonable ground for the legislation. If the statute excludes from its purview a single member of a class thus defined it becomes special."

Within the rule established by these cases the classification created by section 4 of the act of 1906, is arbitrary and illusory because it places restrictions upon some members of the same class which are not placed upon the others, and because it discriminates without justice or reason between those similarly en-

gaged in a business which, however undesirable it may be thought to be by some of our citizens, is recognized under the laws of the state.

In the opinion of the court below it was said that "The statute is discriminating; it does seem to impose more restrictions upon one class of dealers than upon another," but it was held that this did not make the act objectionable because "no one is compelled to take out a license to engage in the sale of intoxicants by retail who does not wish to do so or does not like the law to which he is required to conform." This I submit, is no reason for denying to the plaintiff in error the equal protection with all others of the constitution of the state in which he is engaged in business. While the state may undoubtedly altogether prohibit the sale of intoxicants at retail, ~~or may permit a license to be granted to one and arbitrarily cause it to be withheld from another,~~ it cannot, after it has authorized the granting of licenses, ~~and they have been granted and are in force, without cause~~ impose arbitrary restrictions upon one licensee and refrain from imposing them upon ~~the~~ others where there is no cause for differentiating between them. It is no answer to what has been said above or to the rule laid down in the cases there cited to say that no one need engage in the liquor business and therefore cannot complain if when he has done so restrictions are placed upon him by the state which are not placed upon any other similar dealer. Nor is it any answer to say that the state may not only prohibit but may regulate the sale of liquor within its borders as it sees fit, for in the absence of such prohibition its regulations must be made in conformity with the constitutional provision which forbids the passing of local or special laws. *or the granting of privileges to one which are withheld from another.*

None of the cases cited in the opinion are authority for the statement that legislation descriminating between holders of liquor licenses similarly situated is valid, and it is not believed that such authority can be found. The cases cited by the learned justice go no further than to hold that it is within the power of the state to prohibit or regulate the liquor traffic. In this I concur, but I do not conceive that this power authorizes discrimination between those whom the state has permitted to engage in the liquor business not founded upon any reasonable or just basis.

II.

THE ACT IS INVALID BECAUSE IT CONFLICTS WITH THE PROVISIONS OF THE STATE CONSTITUTION PROHIBITING THE LEGISLATURE FROM PASSING PRIVATE, LOCAL OR SPECIAL LAWS GRANTING TO ANY CORPORATION, ASSOCIATION OR INDIVIDUAL ANY EXCLUSIVE PRIVILEGE OR FRANCHISE WHATSOEVER.

This provision is contained in article 4, section 7, paragraph 11, of the constitution, and is as follows:

"The legislature shall not pass private, local or special laws in any of the following enumerated cases, that is to say, * * * granting to any corporation, association or individual any exclusive privilege, immunity or franchise whatsoever."

Much of what has already been said is equally applicable here. As the section in question imposes restrictions upon some members of the retail liquor business and not upon others, the exempted class necessarily becomes a favored class, and its members the holders of exclusive privileges within the meaning of the constitutional prohibition. By the amendment in question there is created, without any real basis for

so doing, a favored class of retail dealers in liquors who are clothed with peculiar privileges not enjoyed by the others engaged in the same business, but not within the favored class.

In considering the validity of the legislation in question it should be borne in mind that the power of the legislature to enact laws under its general police powers is limited to the bettering of the moral or physical conditions of the community. Since the restrictions now imposed amount to an attempt to classify liquor dealers on a basis having no real relation to the object to be attained and fail to operate equally, the amendment simply results in the creation of special privileges in favor of individuals under the guise of police regulation. The close relationship between this point and the one already discussed makes a more extended discussion unnecessary. It is submitted that the case of *Alexander vs. City of Elizabeth*, 27 Vroom, 71, in which the "Race Track Act" was declared unconstitutional, is decisive on this point. The court there said:

"It is manifest that this provision of the statute operates to create such a classification as not to confer upon all race-courses alike the benefit which inures from the exercise of the powers under the first section of this act. The act creates and confers privileges upon one class of race-courses and grants to certain corporations, associations and individuals privileges and immunities which can be rarely, if ever, conferred upon others under its provisions. The conditions imposed are not even similar. One class of race-courses may be established without regard to conditions at all; another class can only be established by submitting to the imposition of a condition which may be either of difficult or impossible performance.

Handwritten notes:
The act creates a class (Alexander vs. City of Elizabeth)
The act confers privileges upon one class of race-courses and grants to certain corporations, associations and individuals privileges and immunities which can be rarely, if ever, conferred upon others under its provisions.
The conditions imposed are not even similar. One class of race-courses may be established without regard to conditions at all; another class can only be established by submitting to the imposition of a condition which may be either of difficult or impossible performance.

One class is privileged to the point, almost, of monopoly, and the other class is discriminated against almost to the point of absolute prohibition, and this is a vice of statutory enactment declared against and plainly interdicted by the provisions of the constitution against the passage of local or special laws granting to any corporation, association or individual any exclusive privilege, immunity or franchise."

See also *State vs. Post*, 26 Vroom 264; *State vs. O'Connor*, 25 Vroom, 36. *

III.

BECAUSE IT CONFLICTS WITH THE 14TH AMENDMENT OF THE FEDERAL CONSTITUTION IN THAT IT DENIES TO ALL PERSONS WITHIN THE JURISDICTION OF THE STATE THE EQUAL PROTECTION OF ITS LAWS.

It is not contended that the 14th amendment was designed to interfere with the exercise of the police power of the several states, or that in the exercise of that power the state may not prohibit the sale of intoxicating liquors or regulate it if permitted, but as is stated in the opinion of the learned justice in the court below, a state cannot under its police power by arbitrary, fanciful or illusory action discriminate between citizens holding liquor licenses. "After the license is granted all who are similarly situated are entitled to equal privileges as licensees."* Any legislation which discriminates against some and favors others is prohibited by the 14th amendment, whether enacted under the police power or not. *Barbier vs. Connolly*, 113 U. S., 27.* To quote again from the opinion of the Supreme Court, "Class legislation, whether within or without the police power, discriminating against some and favoring others, is prohibited." The following excerpt from the opinion

*' No man can it discriminate between applicants for license.

People v. Scampini (184) 59 Atl 201
City of Tacoma v. Kres (Wash) 46 Pac 255

of the Supreme Court of the United States in *Scott vs. Donald*, 165 U. S., 58, holding the South Carolina Dispensary Act to be unconstitutional is in point here:

“The evils attending the vice of intemperance in the use of spirituous liquors are so great that a natural reluctance is felt in appearing to interfere, even on constitutional grounds, with any law whose avowed purpose is to restrict or prevent the mischief. So long, however, as state legislation continues to recognize wines, beer, and spirituous liquors as articles of lawful consumption and commerce, so long must continue the duty of the federal courts to afford to such use and commerce the same measure of protection, under the constitution and laws of the United States, as is given to other articles.

* * * Our willingness to believe that this statute was enacted in good faith, and to protect the people of the state from the evils of unrestricted importation, manufacture, and sale of ardent spirits, cannot control the final determination, whether the statute, in some of its provisions, is not repugnant to the constitution of the United States. As was said in *Mugler vs. Kansas*, 123 U. S., 661, 8 Sup. Ct. 273: ‘If a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the constitution.’”

That the legislation under review is discriminatory has, I submit, been shown. That it denies to the plaintiff in error the same protection of the law that is given to the liquor dealers in the favored class necessarily follows because if he does what they are at liberty to do, he will not only forfeit his license but will also be guilty of misdemeanor.

IV.

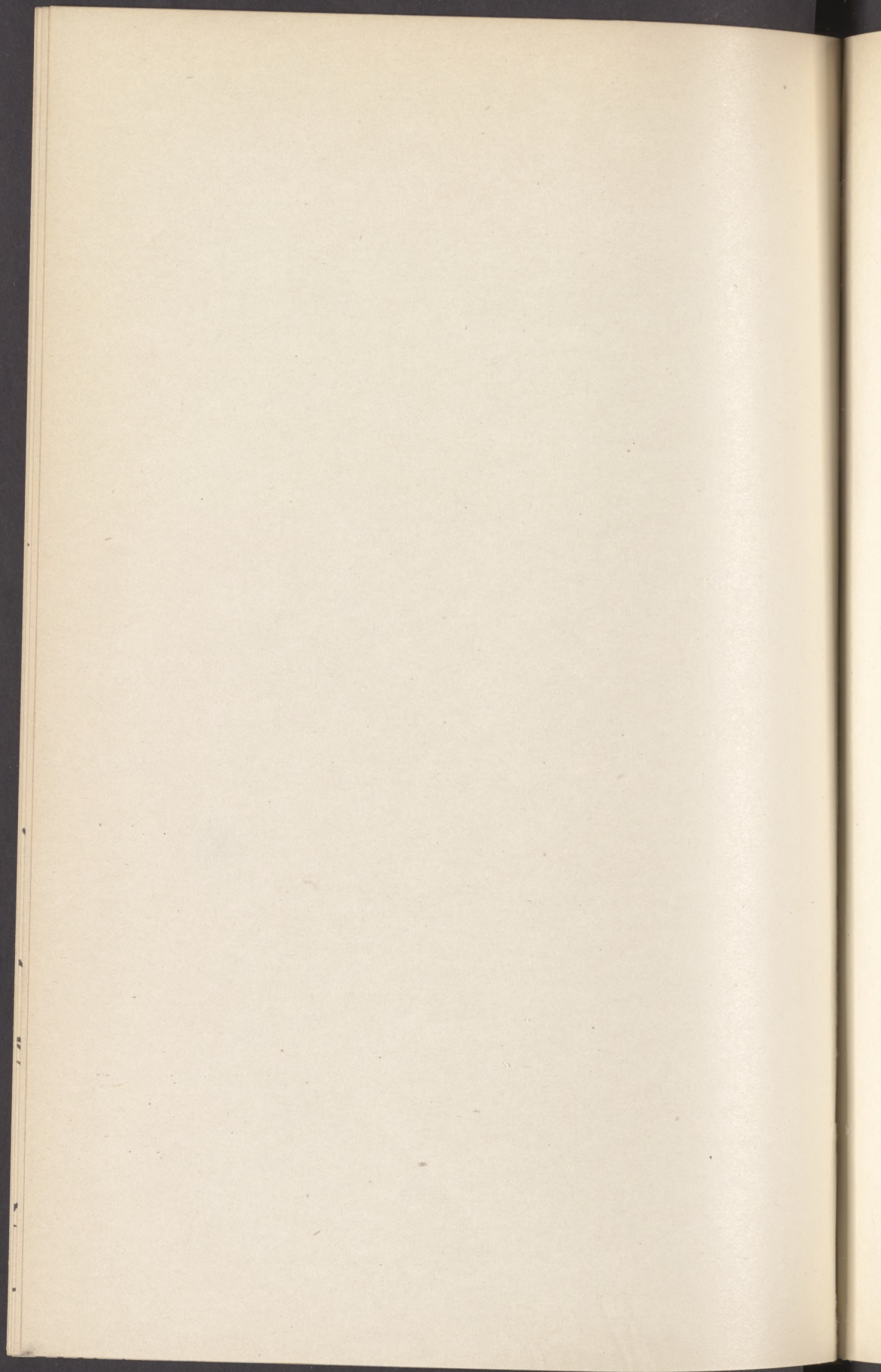
FOR THE REASONS STATED, I SUBMIT THAT THE JUDG-
MENT OF THE SUPREME COURT SHOULD BE REVERSED.

RICHARD V. LINDABURY.

Dated June 15, 1907.

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NEW JERSEY, ss.:

STATE OF NEW JERSEY TO OUR JUSTICES OF OUR SUPREME COURT.

GREETING:

Because in the record and proceedings, and also in the giving of the judgment in a plaint, which was in our said Supreme Court, before you, between Hugh Meehan, prosecutor and plaintiff, and the Mayor and Aldermen of Jersey City, the Board of Excise Commissioners of Jersey City and the Board of Police Commissioners of Jersey City, defendants, on a certiorari issued out of our said Supreme Court, to the said the Mayor and Aldermen of Jersey City, the Board of Excise Commissioners of Jersey City and the Board of Police Commissioners of Jersey City, defendants, as is said manifest error hath interviened to the great damage of the said Hugh Meehan, plaintiff as aforesaid, as by his complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command that if judgment be thereupon given, then you send distinctly and openly, under your seal, the record and proceedings and plaint aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals, from the judgment thereof, on the fourteenth day of September, A. D. nineteen hundred and six, and this writ, that the records and proceedings aforesaid being inspected, we may cause to be further

done thereupon what of right and according to law ought to be done.

WITNESS:

William J. Magie, our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton, the twenty-fifth day of August, A. D. nineteen hundred and six.

S. D. DICKINSON,
Clerk.

ROBERT S. HUDSPETH,
Attorney for plaintiff.

NEW JERSEY SUPREME COURT.

 HUGH MEEHAN,

Prosecutor,

vs.

 THE MAYOR and ALDERMEN of
 Jersey City, the Board of Ex-
 cise Commissioners of Jersey
 City, and the Board of Police
 Commissioners of Jersey City,
 Defendants.

*Writ of
 Certiorari.*

New Jersey, to wit:

[SEAL] The State of New Jersey to the Mayor
 and Aldermen of Jersey City and the
 Board of Excise Commissioners of Jer-
 sey City,

Greeting:

We being willing for certain reasons, to be certi-
 fied of a rule, regulation or resolution adopted by
 the Board of Excise Commissioners of Jersey City,
 on Thursday, the twelfth day of July, A. D. nine-
 teen hundred and six, reading as follows:

Resolved, That from and after the adoption of
 this rule, the interior of the bar or business room
 in which liquors and other intoxicating drinks are
 sold and served under any license granted by this
 Board, shall during such times as such sales are
 prohibited by law, be open to full view from the pub-

lie street; Provided, however, this rule shall have no application to such places as are exempt from its operation under the provisions of said law."

We command you, with the said resolution and all things incidental or appertaining thereto, together with the proceedings in connection with the adoption thereof, as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature, at Trenton, on the twenty-sixth day of July, A. D. nineteen hundred and six, 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, Esquire,
Chief Justice of our Supreme Court, at Trenton,
this twentieth day of July, A. D. nineteen hundred
and six.

WM. RIKER,
Clerk.

R. S. HUDSPETH,
Attorney.

[SUPREME COURT, SEAL.]

REASONS.

1st. There is no foundation in law for the adoption of the said Resolution of the Board of Excise Commissioners of Jersey City.

2nd. That the adoption of said Resolution was an unwarranted act on the part of the said Board of Excise Commissioners of Jersey City.

3rd. Said Resolution was adopted in pursuance of Section Four (4) of an Act of the Legislature entitled "A Supplement to an Act entitled, 'An Act to regulate the sale of spirituous, vinous, malt

and brewed liquors,' and to repeal an Act entitled, 'An Act to regulate the sale of intoxicating and brewed liquors, passed March 7th, 1888, approved March 20th, 1889', which Supplement was approved April 13th, 1906," and which said Act is unconstitutional, particularly and especially in the Section referred to, to wit, Section Four (4) thereof, and various other sections of the said Act.

4th. Said Resolution is illegal, in that it will operate to a destruction and confiscation of the property of the Prosecutor, without just compensation and contrary to his constitutional rights.

5th. Said Resolution is illegal, in that in its operation it will work an unjust discrimination as between the Prosecutor and other citizens of Jersey City and individuals engaged in the same and a similar kind of business as that of the Prosecutor—a discrimination not founded upon reason or justice, it being arbitrary and illusory in nature and effect.

6th. That the said Resolution of the said Board of Excise Commissioners of Jersey City, wherein and whereby it was provided, that the same and the provisions thereof, should have no application to such places as are pretended to be exempt from the operation of Section 4 of the Act of the Legislature aforesaid, to wit: an inn or tavern, a hotel having at least ten spare rooms and beds for the accommodation of boarders, transients and travelers, a restaurant where the business of furnishing meals to the public is regularly carried on, and which restaurant is conducted on more than one floor or story of the building where said business is carried on, a picnic or recreation ground, a build-

ing with a bowling alley, or a building entirely occupied by a regularly organized club or association, is unreasonable and unjust, and is violative of the constitutional rights of this Prosecutor, and is contrary to the Constitution of this State.

7th. That the said Act is a special and local act and unconstitutional.

8th. That said Resolution is illegal, and is contrary to the Fourteenth Amendment of the Constitution of the United States, wherein and whereby, it is amongst other things provided, that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the laws.

And finally, and because for other reasons, said Resolution, Acts and Orders, and each of the same, are illegal and void.

R. S. HUDSPETH,
Attorney for Prosecutor.

RETURN.

In obedience to the command of this writ to us directed, we, the defendants within named, do hereby certify and send to you, the Honorable Justices of the Supreme Court, the Resolution of the Board of Excise Commissioners of Jersey City, made and adopted by the said Board, on the twelfth day of July, A. D. nineteen hundred and six, to-

gether with the excise license granted by the said Board of Excise Commissioners of Jersey City and issued to the Prosecutor, Hugh Meehan, for a restaurant, to sell spirituous, vinous, malt and brewed liquors, at No. 213 Washington Street, in said Jersey City, from the date of said license, July first, nineteen hundred and six, to July first, nineteen hundred and seven, and also all things touching and concerning the same as fully as they remain before us, by the schedule hereto annexed appears; the said Resolution being marked "Exhibit A," and the said license marked "Exhibit B."

STIPULATION.

It is also, by way of return to the said writ, and the same is hereby certified and sent to you, the said Honorable Justices of the Supreme Court, as admitted facts herein.

1. That the said Board of Excise Commissioners of Jersey City, made and adopted the Resolution, of the twelfth day of July, nineteen hundred and six aforesaid, under and in conformity with Section 4 with the provisions of the Act of the Legislature of the State of New Jersey, entitled A Supplement to an Act entitled "An Act to regulate and sell spirituous, vinous, malt and brewed liquors, and to repeal an Act entitled (An Act to regulate the sale of intoxicating and brewed liquors, passed March 1, 1888), approved March 20, 1889, which Supplement in question was approved April 13, 1906, and particularly in view of Section 4 of the said Act.

2. That in the bar or business room, of the said

Prosecutor, Hugh Meehan, at No. 213 Washington Street, Jersey City, aforesaid (the place embraced in the aforesaid excise license), the said Prosecutor had, at the time of the granting of the said excise license, and still has, certain wooden and glass screens in the show windows of the said store floor, and certain non-transparent glass (similar in design and description to those used very generally in connection with the retail liquor business in Jersey City), in the doors leading from the said store to the street, and certain curtains attached to the said windows and doors, and that these screens, non-transparent glass and curtains have been used and maintained in connection with the liquor business carried on by the said Prosecutor, in and about the said store premises, during the time said Prosecutor has been engaged in said business there.

That he has also set up, and has maintained, during the same period, in and upon the said store floor, irrespective of the bar, back bar and toilet, a partition dividing the said store into a front and rear room, and back of said rear room and connected therewith, by an ordinary doorway and door, he maintains an additional room for cooking purposes.

3. That the said Prosecutor, Hugh Meehan, has also always maintained and used, in connection with his said saloon business, and in the front bar or business room, a cigar case and counter, and a lunch counter.

4. That the said Prosecutor, Hugh Meehan, has been engaged in the retail liquor business in and about the premises in question, for the last four years, during which time he has been licensed by the said Board of Excise Commissioners of Jersey

City, to keep and maintain a restaurant, and to sell at retail, spiritous, vinous, malt and brewed liquors.

5. That the said Prosecutor, Hugh Meehan, sets up and serves to his customers—cooked food—a portion of which is cooked in the room above referred to, and is served, both in the front or main bar room, and in the room in the rear of said bar room, and immediately adjoining the same.

6. That since the making and adoption of the said Resolution, of July twelfth, nineteen hundred and six, by the Board of Excise Commissioners of Jersey City, the Police Department of Jersey City have caused notice and directions to be given, to all those engaged in the retail liquor business in Jersey City, and licensed for that purpose, to have the interior of the bar or business room, where such liquor business is carried on, under any license granted by the said Excise Board, to be kept open to full view from the public street, at all times when such sales of said liquors are prohibited by law, by removing all screens, non-transparent glass, shade, blinds, doors, shutters or merchandise, or any other article placed in any of the said rooms, as more fully provided in the Act of the Legislature, *Supra*, provided, however, that such notice and directions should not apply to, or affect any place and individual, licensed to sell spiritous, vinous, malt and brewed liquors in said city, and which place is an inn nor tavern, or a hotel having at least ten spare rooms and beds for the accommodation of boarders, transient and travelers, or a restaurant where the business of furnishing meals to the public for compensation is regularly carried on, and which restaurant is conducted and operated on more than one floor or story of the building,

where such business is carried on, or a picnic or recreation ground, or a building with a bowling alley, or a building entirely occupied by a regularly organized club or association.

7. That since the adoption of the said resolution of July twelfth, nineteen hundred and six, by the Board of Excise Commissioners of Jersey City, the Police Department of Jersey City have, in certain cases, summoned individuals engaged in the retail liquor business in Jersey City, and licensed to carry on such business by the proper authorities of Jersey City, and in other cases have caused arrests of like individuals to be made, excepting, however, from such summoning and arrest the aforesaid excepted class, to answer complaints made against such individuals respectively, by the said Police Department or members thereof, charging such individuals with violation of the said Act of the Legislature, and particularly of Section 4 of the said Act, in that they had respectively refused and neglected to remove the screens, etc., so that the entire interior of their bar or business room, in which such liquors and other intoxicating drinks were sold and served, was open to full view from the public street, during the entire prohibited time referred to in the said Resolution of the Board of Excise Commissioners, and provided in said Section 4 of the said Act of the Legislature, particularly during the Sabbath day.

8. That individuals and places are licensed in Jersey City to sell at retail spirituous, vinous, malt and brewed liquors as follows: An inn and tavern, a restaurant, where the business of furnishing meals to the public, for compensation, is regularly carried on, and which restaurant is conducted and

operated on more than one floor or story of the building, where such business is carried on; or a picnic or recreation ground, and a building with a bowling alley, or a building entirely occupied by a regularly organized club or association.

9. That with a few exceptions, the license granted by the Excise Board of Jersey City, to sell spirituous, vinous, malt and brewed liquors at retail, is known and designated as a restaurant license; that no license has been granted to any individual in said city, to keep and maintain a hotel with ten rooms or more, of the character and description referred to in the Act in question.

Finally, the said Prosecutor, Hugh Meehan, does not keep an inn or tavern.

I. F. GOLDENHORN,
Assistant Corporation Attorney of Jersey City.

R. S. HUDSPETH,
Attorney and of Counsel with Prosecutor.

“EHIBIT A.”

RESOLUTION BY COMMISSIONER

FALLAHEE.

Resolved, That from and after the adoption of this rule, the interior of the bar or business room in which liquors and other intoxicating drinks are sold and served under any license granted by this Board shall, during such times as such sales are prohibited by law, be open to full view from the public street; Provided, however, this rule shall have no application to such places as are exempt

from its operation under the provisions of the said law.

I Hereby Certify that the foregoing is an exact and true copy of the Resolution adopted by the Board of Excise Commissioners on July 12th, 1906.

Given under my hand and seal at the City of Jersey City, County of Hudson, and State of New Jersey, this 25th day of July, A. D. 1906.

GEORGE McCARTHY,

City Clerk.

“EXHIBIT B.”

This license shall be void if the business licensed by it shall be carried on in an hotel having ten spare rooms and beds for the accommodation of boarders, transients and travelers.

RESTAURANT.

To Sell Spirituous, Vinous, Malt and Brewed Liquors.

This License expires July first, 1907.

No. 601.

THE BOARD OF EXCISE COMMISSIONERS
OF THE CITY OF NEW JERSEY,

by virtue of the laws of the State of New Jersey relating thereto, have and by these presents do grant to

\$500.00 HUGH MEEHAN, \$500.00

a license to sell spirituous, vinous, malt and brewed

liquors at No.

213 Washington Street,

in said City, from date hereof to July 1st, 1907,
upon the conditions and subject to the provisions
of the laws regulating the sale of intoxicating and
brewed liquors and the granting of licenses there-
for.

Jersey City, N. J.....190

[SEAL.]

MARK M. FAGAN, Mayor.

Attest:

GEORGE M. MCCARTHY, City Clerk.

1906—7.

THIS LICENSE MUST BE KEPT IN A CON-
SPICUOUS POSITION AS REQUIRED
BY THE EXCISE LAW.

OPINION.

*Meehan vs. Board of Excise Com'rs of Jersey City,
et al.*

(Supreme Court of New Jersey, Aug. 7, 1906.)

1. INTOXICATING LIQUORS—SALES—REGULATION—
LICENSE.

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 practi-
cally limitless. It may extend to the prohibition

of the sale altogether. A license is not a contract. It is a mere privilege.

~~[Ed. Note.—For cases in point, see vol. 29, Cent. Dig. Intoxicating Liquors, §§ 4, 7, 103, 104.]~~

2. CONSTITUTIONAL LAW—PRIVILEGES AND IMMUNITIES.

The privileges and immunities guaranteed to the citizens by the fourteenth amendment to the Constitution of the United States, relates to those rights which may be called fundamental. Those which belong of right to all citizens of a free government, and which have, at all times, been enjoyed by the citizens of the several states.

~~[Ed. Note.—For cases in point, see vol. 10, Cent. Dig. Constitutional Law, § 625.]~~

3. SAME—RIGHT TO SELL LIQUOR.

There is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of the state or of the United States.

~~[Ed. Note.—For cases in point, see vol. 10, Cent. Dig. Constitutional Law, § 631.]~~

4. SAME—CLASS LEGISLATION—CLASSIFICATION OF LICENSES.

Legislation that classifies licenses, for the sale of intoxicating liquors by retail, so that those who are required to expose their places of business to view, are distinguished from other licensees, by palpable differences in the conditions under which the liquor is to be sold, is not unconstitutional.

~~[Ed. Note.—For cases in point, see vol. 10, Cent.~~

~~Big Constitutional Law, § 667.]~~

(Syllabus by the Court.)

Certiorari by Hugh Meehan against the Board of Excise Commissioners of Jersey City and others, to set aside a resolution of the Excise Board of Jersey City. Resolution sustained.

Argued June term, 1906, before FORT, REED, and TRENCHARD, JJ.

Robert S. Hudspeth, for prosecutor, George L. Record, Peter Backes, and I. F. Goldenhorn, for defendants.

FORT, J. The application in this case is to set aside a resolution of the Excise Board of Jersey City, brought up by the writ, directing the removal of screens from certain licensed places, in accordance with the powers conferred by the supplement to the act entitled "An Act to regulate the sale of spirituous, vinous, malt, and brewed liquors, and to repeal an act entitled 'An Act to regulate the sale of intoxicating and brewed liquors', passed March seventh, one thousand eight hundred and eighty-eight, approved March 20, 1889," approved April 13, 1906 (P. L. 1906, p. 199). The resolution is as follows: "Resolved, That from and after the adoption of this rule, the interior of the bar or business room in which liquors and other intoxicating drinks are sold and served under any license granted by this Board, shall, during such times as such sales are prohibited by law, be open to full view from the public street. Provided, however, this rule shall have no application to such places as are exempt from its operation under the provisions of said law."

It is not claimed that the resolution exceeds the powers conferred upon the Excise Board by the statute. The contention is that the statute conferring the power is unconstitutional. The power conferred is found in section 4 of the act. This section may be said to be inartistically drawn. It is quite involved. Summarized, it prohibits the granting of a license to any person to sell spirituous, vinous, malt, or brewed liquors by less measure than one quart: (1) In any place where a grocery or mercantile business is carried on, excepting the keeping of a restaurant and selling tobacco and cigars; (2) In any place within 200 feet of a church edifice, schoolhouse, or armory; or, (3) In any place, except in a bar or business room upon the ground floor or basement of a building upon a public street; excepting, however, out of this third (3) class, the following licensed places: (a) An inn and tavern, or a hotel having at least 10 spare rooms and beds for the accommodation of boarders, etc. (b) A restaurant conducted upon more than one floor or story of a building where meals are regularly furnished, to the public, for compensation. (c) A picnic or recreation ground. (d) A building with a bowling alley. (e) A building entirely occupied by a regularly organized club or association.

The contention is that these exceptions result in a practical discrimination between saloon licenses and inn or hotel licenses, as well as between saloons and licensed restaurants, of the excepted class, where meals are regularly furnished. This seems to be the clear effect of the statute. It also distinguishes between saloons and picnic grounds and also between saloons with, and without, bowling alleys. The reason for this classification is not for the court to endeavor to discover or to attempt

to reconcile with what may or may not be deemed the policy of the state as to granting, restricting or withholding licenses. With these questions the court has nothing to do. The Legislature, so long as it keeps within its constitutional prerogatives, is, upon such questions, supreme. If the legislation is objectionable on questions of public policy, the Legislature must be looked to, to remedy it. That is not within the province of the court. We can only inquire as to the legislative power under the Constitution. The section further provides, that, as to all the licensed saloons or other places where liquor is allowed to be sold, except in the excepted classes as aforesaid, "no spirituous, vinous, malt, brewed, or other intoxicating liquors shall be sold or served in any room, except in such bar or business room, and the clear interior view of the whole of said bar or business room * * * shall be in no way obstructed by a screen, nontransparent glass, shade, blind, door, shutter, merchandise or any other article, placed in any of said rooms." This part of the section would seem to be clear enough, and to be prohibitive of all screens, or the like, which are obstructive of a clear view of the whole interior of the room in which liquors are sold. A violation of this provision by any person or persons makes the person guilty of the offense of keeping a disorderly house. But, the section seems to go further than this, on the subject of screens, and the like, and to provide that, in addition, or as supplementary, to this general requirement of the statute: "The court, Excise Board or other board or authority having power by law to grant licenses, etc., * * * shall upon the days and times when the sale of liquors or other intoxicating drinks is, by law, prohibited to be sold" (Sundays and elec-

tion days) (and) "may at any or all other times, require that the entire interior of such bar or business room * * * shall, during the entire prohibited time, or may at any and all other times, as may be required by such authority, be open to full view from the public street."

It is a resolution to require this clear view from the public street on prohibited days, of all places not within the excepted classes, that we are asked to declare void, because it is claimed that the conferring of the power upon the Excise Board, to pass such a resolution, is unconstitutional. Before considering this question, it might be well to state for clearness that it would seem that the section under review makes two offenses. The one by the terms of the act itself for failure to keep a clear interior view of the whole of the bar or business room, free from any obstruction or screen, nontransparent glass, shade, blind, door, shutter or merchandise, or other article, placed in any of said rooms." The other relates to any obstruction which prevents a like clear view from the public street. It was evidently the legislative purpose to prohibit in all cases, by force of the statute itself, any obstruction of the view, by any person, of any other person within the bar or business room, serving or being served with liquor therein. The interior of the bar or business room must be so arranged as to give at all times an unobstructed view, of the whole interior, from the interior, and, when the court, Excise Board, or other licensing authority in any municipality shall so require the same, an unobstructed view of the bar or business room must exist from the public street.

The resolution of the Excise Board of Jersey City here for review, requires such unobstructed view

from the public street upon the prohibited days. We are unable to find in this requirement of the statute any unconstitutional feature. The right to regulate the sale of intoxicating liquors, 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. It may extend to the prohibition of the sale altogether. A license is not a contract. It is a mere privilege. Cooley's *Con. Lim.* (5th Ed.), p. 718; *Cowley vs. Christensen*, 137 U. S. 86, 11 Sup. Ct. 13, 34 L. Ed. 620; *Robinson vs. Haug*, 71 Mich. 38, 38 N. W. 668. It is unnecessary to extend the discussion of this question beyond the examination of the statute, and this brief statement of its purpose, to show that the act is a mere regulation of the sale of liquors, under a license granted by the state; which has been uniformly held to be within the power of the Legislature under the police power. While the statute is discriminating, and does seem to impose more restrictions upon one class of dealers than upon another, still, such a classification, of all dealers, similarly situated, is entirely within the legislative authority, and one of the answers to the objection to the act, on this ground, is that no one is compelled to take out a license to engage in the sale of intoxicants by retail, who does not wish to do so, or who does not like the law to which he is required to conform. For the authority for such legislation as that under review, a full citation of the cases in all the states will be found in the *Am. & Eng. Ency. of Law*, vol. 17 (2d Ed.), title "Intoxicating Liquors." See, also, *Com. vs. Casey*, 134 Mass. 194; *Met. Board of Excise vs. Barrie*, 34 N. Y. 657; *State vs. Corron et al.* (N. H.), 62 Atl. 1044.

It was also urged that this act is in violation of

that part of the fourteenth amendment to the Constitution of the United States, which reads as follows: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. Nor shall any state deprive any person of life, liberty or property without due process of law. Nor deny to any person within its jurisdiction the equal protection of the laws." This clause of the Federal Constitution relates to those rights of the citizen which may be called fundamental. Those which belong of right to all citizens of a free government, and which have at all times been enjoyed by the citizens of the several states. *Ward vs. Md.*, 12 Wall. (U. S.) 430, 20 L. Ed. 449; *Slaughter House Cases*, 16 Wall. (U. S.), 36, 21 L. Ed. 394; *Powell vs. Com. of Penn.*, 127 U. S. 678, 8 Sup. Ct. 992, 1257, 32 L. Ed. 253. Mr. Justice Field, in *Crowley vs. Christensen*, *supra*, says: "There is no inherent right in a citizen to sell intoxicating liquors by retail; it is not a privilege of a citizen of the state or the United States. It may be entirely prohibited by state legislation, or limited in its evils."

The police power is inherent in the several states and was left with them under our federal system of government, as the Constitution was originally ratified by the states, and the fourteenth amendment has not changed this in any way. The cases in the Supreme Court of the United States and the several state courts, affirming this principle, will be found collected in *Am. Eng. Ency. of Law*, vol. 22, p. 919. The states have always, under this police power, regulated, and, if they desire prohibited, the retail liquor traffic. Retailing intoxicating liquors was never a privilege which the citizen could demand, as a right. It has been subject to license

and regulation at all times and is still so. This court has so held. *Hoboken vs. Goodman*, 68 N. J. Law, 217, 51 Atl. 1092; *Crocker vs. Board of Excise of Camden* (June term, 1906), 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. There is no contract relation between the state and the licensed retail liquor dealer. He must conform his business to the state and municipal regulations, lawfully enacted.

The fourteenth amendment in no way impairs the force of the legislation under review. It is not our intention, of course, to affirm that, under the police power, notwithstanding the fourteenth amendment, the state may, by arbitrary, fanciful or illusory action, discriminate between citizens holding licenses. After the license is granted, all who are similarly situated are entitled to equal privileges as licensees. Class legislation, whether within or without the police power, discriminating against some and favoring others, is prohibited; but, legislation, carrying out a public purpose, although limited in its application, if, within the sphere of its operation, it affects alike all persons similarly situated, is not interdicted by the fourteenth amendment. *Soon Hing vs. Crowley*, 113 U. S. 703, 5 Sup. Ct. 730, 28 L. Ed. 1145; *Barbier vs. Connolly*, 113 U. S. 27-32, 5 Sup. Ct. 357, 28 L. Ed. 923; *Hayes vs. State*, 120 U. S. 69, 7 Sup. Ct. 350, 30 L. Ed. 578; *Jones vs. Brim*, 165 U. S. 180, 17 Sup. Ct. 282, 41 L. Ed. 677. In the legislation under review, we think the Legislature has clearly classified the licenses so that those who are required to expose their place of business to view, are distinguished from other licenses by palpable differ-

ences in the conditions under which the liquor is to be sold; and those differences appearing, as shown by the analysis of the statute at the beginning of this opinion, the court will not interfere with the conclusion of the Legislature that they afford a proper basis for the discrimination exercised. *Wright vs. Hast* (Sup.) 93 N. Y. Supp. 60.

It was also contended upon the argument that even if section 4 of this act of April 13, 1906, was not unconstitutional, that section 5 of the act was clearly so, and that this section being so would avail to avoid the entire act. We cannot agree to this view. If section 5 of the act should be determined to be unconstitutional, it appears to be an entirely independent section, and is clearly severable from and unconnected with, the other provisions of the statute, and, under our decisions might be declared to be void without affecting the rest of the act. *McArdle vs. Jersey City*, 66 N. J. Law, 590, 49 Atl. 1013, 88 Am. St. Rep. 496; *State vs. Davis* (N. J. Sup.) 61 Atl. 2.

We do not find any ground upon which the act of April 13, 1906, can be said to be unconstitutional, and hence, the resolution of the excise board of Jersey City brought up by the writ, in this case, is a valid exercise of the power conferred by the statute, and is sustained with costs.

RULE FOR JUDGMENT.

The Court having heard the argument of counsel and having inspected the resolution, rule and regulation removed by the writ of certiorari in this cause, and having read and duly considered the

stipulation of facts filed and the reasons filed:

IT IS ORDERED, that the writ of certiorari be dismissed.

On motion of

GEORGE L. RECORD,
Atty. of Defendants.

ASSIGNMENT OF ERRORS.

Afterwards, that is to say, on the tenth day of September, in the year of our Lord, one thousand nine hundred and six, in the Court of Errors and Appeals, the last resort in all causes, comes said Hugh Meehan, prosecutor below and plaintiff in error, by Robert S. Hudspeth, his attorney, and says: that in the record and proceeding aforesaid, also in the finding of judgment aforesaid, there is manifest error in this, to wit:

FIRST. That the said Justices, before whom, &c., found and ruled against the prosecutor below and in favor of the defendants below; whereas, by the law of the land they should have found and determined in favor of the prosecutor below.

SECOND. That the said Justices, before whom, &c., found that the resolution referred to in the writ of certiorari was good, valid and effectual in law; whereas, the said Justices, &c., should have decided said resolution to be illegal and void, and should have set aside the same.

THIRD. That the said Justices, before whom, &c., decided under and by virtue of Chapter 114

of the Laws of 1906, the Board of Excise Commissioners of Jersey City was authorized and warranted in the passage and the adoption of the rule, argument or resolution referred to in the said writ of certiorari, and set forth in the return to said writ; whereas, the said Justices should have decided that said act did not warrant or authorize the passage or adoption of any such rule, regulation or resolution.

FOURTH. That the said Justices, before whom, &c., decided that section four of an Act of the Legislature entitled "A supplement to an act entitled 'An Act to regulate the sale of spirituous, vinous, malt and brewed liquors,' and to repeal an act entitled 'An Act to regulate the sale of intoxicating and brewed liquors,' passed March 7, 1888, approved March 20, 1889," which said act was approved the 13th day of April, nineteen hundred and six, and is known as chapter 114 of the laws of 1906, was constitutional; whereas, the said Justices, &c., should have decided said section of said Act to be unconstitutional, void, and of no effect.

FIFTH. That said Justices, before whom, &c., decided that it was lawful for the municipal authorities of Jersey City to cause the plaintiff in error to comply with the terms and provisions of the resolution referred to in the writ of certiorari and set forth in the return to said writ; whereas, the said Justices should have found such action or contemplated action to be unwarranted and without lawful authority.

SIXTH. That the said Justices, before whom,

&c., found and determined that the said section of the said Act was not in conflict with the constitution of the United States and the constitutional rights of the plaintiff in error thereunder; whereas, said Justices, &c., should have found the said section of said statute in conflict with the constitution of the United States, and therefore unconstitutional and void.

SEVENTH. That the said Justices, before whom, &c., found and determined that said Act, chapter 114 of the laws of 1906, approved the 13th day of April, nineteen hundred and six, was a lawful and constitutional Act; whereas, said Justices, &c., should have found and determined said act to be unconstitutional, void and of no effect.

EIGHTH. That the said Justices, before whom, &c., found and determined that the Board of Excise Commissioners of Jersey City was duly authorized, under the laws of the State, to adopt the rule, regulation or resolution referred to in said writ of certiorari and set forth in the return to said writ; whereas, the said Justices, &c., should have found and determined that no such power vested in said Excise Commissioners of Jersey City.

NINTH. That the said Justices, before whom, &c., found and determined that the police authorities of the Mayor and Aldermen of Jersey City had authority to enforce the provisions of section four of said Act, known as chapter 114 of the laws of 1906, approved the 13th day of April, nineteen hundred and six; whereas, the said Justices, &c., should have found and determined that said sec-

tion of said Act was not in force and operation in Jersey City, and had no application to the plaintiff in error, or to his property.

ROBERT S. HUDSPETH,
Attorney of plaintiff in error.

