

# I N D E X

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(Filed April 28, 1927)

**WRIT OF CERTIORARI**

State of New Jersey, to Wit: The State of New Jersey to the Court of Common Pleas of Passaic County:

Greeting:

We being willing for certain reasons, to be certified of the judgment, order and proceedings, given and made before the Court of Common Pleas of Passaic County, and a certain action brought against Richard Minochian, George Johnson, John Atenia, Billy Effsa, Peter George, Louis Agan, Paul Bazir, Jake Vanoian, Thomas Gallos, John Ali, Edward Sherinian, Jack Kaddish, Joseph Mgrdechian, Hogop Harabolerios, Ara Derbedogian, George Eliopulos, Andrew Force, Thomas Thajkajy, John Tarkakjy, Stratis Gogras, Peter Sohakas, Emil Jockish, George Romy, Peter Pikas, Peter Zins, Nick Sherpis, Thomas Pappas, John Rice and Tony Saco, by the City of Paterson, in which judgment was rendered against the said above-named persons on the twenty-ninth day of March, 1927.

We do command you, the said Court of Common Pleas of Passaic County, N. J., that judgment, order and all proceedings in the aforesaid action brought in the said matter, together with all papers and things appertaining to the same, as fully and entirely as before the said Court of Common Pleas of Passaic County, that remain, to our justices of our Supreme Court of Judicature at

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*Writ of Certiorari*

Trenton on the 26th day of May, 1927, you shall certify the same under the hand of the Judge thereof and the seal of said court, 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, Esq., Chief Justice of our said Supreme Court, at Trenton, the  
10 27th day of April, 1927.

Thomas Barker,  
Clerk.

Edward F. Merrey,  
Attorney of Prosecutor.

I allow this writ, let it be sealed. Either party has leave to take depositions to be used on the argument according to the rules of the Supreme Court.

20 Chas. C. Black,  
Judge.

Dated: April 27th, 1927.

*Return to Writ*

(Filed May 22, 1927)

**RETURN TO WRIT**

		po. n. g.	
		Decision Guilty	
		Bail \$5 each	
424	) Folio 914	Pd	
425	)	All Paid	
426	)	JFG	10
		Pd under protest.	

RECORDER'S COURT, CITY OF PATERSON

State of New Jersey,    )  
County of Passaic,        ) ss.

Before me, John F. Evans, Recorder of the City of Paterson, Personally appeared Sergt. Gus Van Der Bok, Police Department, of No. Paterson, N. J., who being duly sworn, according to law deposes and saith that on the 19th day of April, 1926, Jack Kaddash, Jos. Mgrdechian, Hogop Harabolerios, in the City of Paterson, in the County of Passaic, aforesaid, did violate a provision of the ordinance of the Mayor and Aldermen of the City of Paterson, entitled "An Ordinance to Prohibit Gaming and the Keeping of Gaming Houses in the City of Paterson, and to Provide for the Punishment thereof," passed August 19th, 1899, and approved the same day and the amendments thereof, in that the said defendants were present in the room that John Caracaras of the City of Paterson, did keep or maintain at, to wit 40 Van Houten Street, Paterson, N. J., a room within said City,

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wherein betting, chances or gaming upon the happening of an event, to wit, Dice and Card Gaming was carried on or allowed for money or valuables, in violation of Section One of the said ordinance as above set forth.

Sergt. G. Van Der Bok,  
Complainant.

Sworn at Paterson, this 20th  
day of April, 1926.

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John F. Grossi,  
Clerk to Recorder.

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*Return to Writ*

RECORDER'S COURT OF THE CITY OF  
PATERSON

State of New Jersey, and City  
of Paterson,

vs.

Richard Minochian, George  
Johnson, John Atenia, Billy  
Effsa, Peter George, Louis  
Agan, Paul Bazir, Jake Van-  
oian, Thos. Gallos, John Ali,  
Edw. Sherinian, Jack Kad-  
dish, Jos. Mgrdechian,  
Hogop Harabolerios, Ara  
Derbeddogian, Geo. Eliopu-  
los, Andrew Force, Thos.  
Thajkajy, John Tarkakjy,  
Stratis Gogras, Peter Soha-  
kos, Emil Jockish, George  
Romy, Peter Pikas, Peter  
Zins, Nick Sherpis, Thos.  
Pappas, John Rice and Tony  
Saco,

Defendants.

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“Gaming  
Ordinance”

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**CERTIFICATE OF CONVICTION**

This is to certify that on the twentieth day of  
April, 1926, the above named defendants appeared  
before me, John F. Evans, Recorder of the City of  
Paterson, aforesaid, on the written and sworn  
complaints of Sergeant Gustave Van Der Bok of  
the City of Paterson Police Department, charged

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*Return to Writ*

with violating an ordinance of the Mayor and Aldermen of the City of Paterson entitled, "An Ordinance to Prohibit Gaming and the Keeping of Gaming Houses in the City of Paterson, and to Provide for the Punishment thereof," passed August 19th, 1899, and approved the same day, and the amendments thereof, in that the said defendants were present on April 19th, 1926, in the house, room or apartment that John Caracaras in the City of Paterson, did keep or maintain at, to wit, 40 Van Houten Street, Paterson, New Jersey, wherein betting, chances or gaming upon the happening of an event, to wit, dice and card gaming were carried on or allowed for money and valuables, as reference to the complaints will more fully appear.

To which charges the defendants pleaded Not Guilty; and the witnesses having been sworn, and Edward Merrey, Esq., appearing as attorney for the defendants, and it appearing to the Court from the testimony of the witnesses: Sergeant Van Der Bok, Detective Schulke, Officer Bland, Paul Bazer and sanitary inspector, Paul Kruper, for the prosecution, and the defendant John Caracaras for the defense, that:

On the day in question, April 19th, 1926, all the defendants were present in the room or place operated by John Caracaras at No. 40 Van Houten Street, Paterson, New Jersey, wherein betting, chances and gaming, conditioned upon the happening of events are carried on and allowed, and wherein gaming for money is allowed or carried on, to wit, gaming and gambling for money with playing cards; and it further appearing that on

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the day in question the defendants were playing a game known as "Acey-dewey" with dice and cards, the cards being used for counters; that certain money was found on one of the tables and that John Caracaras had been warned several times to give up the practice of running this establishment, but that he persisted in doing so; that there were curtains on the windows and upon the officers entering the premises all of the defendants, gambling as indicated, made a great effort to escape; it also appeared that at some tables the customers played for drinks and coffee; and it not appearing to the Court from the testimony that the defendants were innocently present without any interest in the gaming; 10

Now therefore, it is on this twentieth day of April, 1926, adjudged, that the defendants are convicted and found guilty of violating the ordinance described, as amended, in that the defendants were presnt in the room or place described on the date set forth, wherein betting, chances and gaming, conditioned upon the happening of events is carried on and allowed, and wherein gaming for money is allowed and carried on, to wit, gaming or gambling with playing cards as the medium, the defendants not being present innocently without an interest in the gaming, and they are hereby sentenced to pay a fine of \$5.00 each as a penalty. 20

Given under my hand and seal at Paterson, New Jersey, aforesaid, this twentieth day of April, 1926. 30

John F. Evans,  
Recorder of the City of Paterson.

*Return to Writ*

## PASSAIC COUNTY COMMON PLEAS

10 In the Matter of the Applica-  
 tion of Jack Kaddash, Jos-  
 eph Mgrdechian, and Hagop  
 Harabolerios, for Review of  
 their Conviction before John  
 F. Evans, Recorder of the  
 City of Paterson.

**PETITION**

To the Honorable Joseph A. Delaney, Judge of the  
 Court of Common Pleas of Passaic County.

20 The petitioners, Jack Kaddash, Joseph Mgrede-  
 chian and Hagop Harabolerios, were convicted by  
 John F. Evans, Recorder of the City of Paterson,  
 on the 20th day of April, 1926, of violating an Or-  
 dinance of the City of Paterson, entitled "An Or-  
 dinance to Prohibit Gaming and the Keeping of  
 Gaming Houses in the City of Paterson, and to  
 Provide for the Punishment thereof", passed  
 August 19, 1899, and were fined the sum of Five  
 Dollars (\$5.00) each, which sum the petitioners  
 then and there paid over to Clerk of the said  
 Court, under protest.

30 Your petitioners are aggrieved by said convic-  
 tions and claim that the same are illegal and un-  
 just, because:

(1) The Court had no jurisdiction to try the  
 said offense.

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(2) The convictions constituted an invasion of rights guaranteed the petitioners under Article 1, Section 9 of the State Constitution.

(3) The complaint does not specify the Ordinance alleged to be violated.

(4) The evidence was insufficient to justify a conviction of petitioners of a violation of the said Ordinance.

(5) The Ordinance referred to in the complaint does not cover the offense set forth in the complaint. 10

(6) The complaint does not specify what amendment of the Ordinance set forth in the complaint was violated by the petitioners.

(7) The Ordinance under which conviction was had, was invalid, illegal, and void.

Your petitioners therefore pray that your Honor order the said John F. Evans to have brought before your Honor, the complaint, warrant, proceedings and record pertaining to petitioners' convictions, aforesaid, to be reviewed by your Honor, and that your Honor make such further order as right and justice shall demand. 20

And your petitioners will ever pray, &c.

Jack Kaddash

Joseph Mgrdechian

Hagop Harabolerios

by Edward F. Meerey,

Atty. 30

*Return to Writ*

State of New Jersey,  
County of Passaic, ss.

Edward F. Merrey, being duly sworn according to law, on his oath, deposes and says that the matters and things set forth in the foregoing petition are true to the best of his knowledge and belief.

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Edward F. Merrey.

Sworn to and subscribed before  
me this 27th day of April,  
1926.

Frank J. Davies,  
A Master in Chancery of New Jersey.

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*Return to Writ*

## PASSAIC COUNTY COMMON PLEAS

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In the matter of the Application of Jack Kaddash, Joseph Mgrechian, and Hagop Harabolerios, for review of their convictions before John F. Evans, Recorder of the City of Paterson.

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**ORDER**

Application having been made to me, Judge of the Court of Common Pleas of Passaic County, by Jack Kaddash, Joseph Mgrdechian and Hagop Harabolerios, to have the legality of their convictions on April 20th, 1926, of violating an Ordinance of the City of Paterson, entitled "An Ordinance to Prohibit Gaming and the Keeping of Gaming Houses, in the City of Paterson, and to Provide for the Punishment thereof" passed August 19, 1899, by John F. Evans, Recorder of the City of Paterson, reviewed. 20

It is on this 29th day of April, 1926, Ordered, that John F. Evans, Recorder of the City of Paterson, bring and have before me on the 22nd day of July, 1926, at ten o'clock in the forenoon, the complaint, warrant, proceedings and record had before him pertaining to the convictions by him of the said Jack Kaddash, Joseph Mgrdechian and Hagop Harabolerios, on April 20th, 1926. 30

Jos. A. Delaney,  
Judge.

*Return to Writ*

437-38-39-40 & 42  
Folio 915

p. n. g.  
Decision Guilty  
\$5 each  
Bail—

Pd. under protest

All Paid  
J. F. G.

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Recorder's Court, City of Paterson

State of New Jersey, )  
County of Passaic, ) ss:

20 Before me, John F. Evans, Recorder of the City  
of Paterson, Personally appeared Sergt. Gus Van  
Der Bok, Police Department, of Paterson, N. J.,  
who being duly sworn according to law, deposeth  
and saith that on the 19th day of April, 1926, Peter  
Zins, Nick Sherpis, Thos. Pappas, John Rice and  
Tony Saco in the City of Paterson, in the County  
of Passaic, aforesaid, did violate a provision of  
the ordinance of the Mayor and Aldermen of the  
City of Paterson, entitled "An Ordinance to Pro-  
hibit Gaming and the Keeping of Gaming Houses  
in the City of Paterson, and to Provide for the  
Punishment thereof," passed August 19th, 1899,  
30 and approved the same day, and the amendments  
thereof, in that the said defendants were present  
in the room that John Caracaras of the City of  
Paterson, did keep or maintain at, to wit 40 Van  
Houten Street, Paterson, N. J., a room within said  
City, wherein betting, chances or gaming upon

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the happening of an event, to wit, Dice and Card Gaming was carried on or allowed for money or valuables, in violation of Section One of the said ordinance as above set forth.

Sergt. G. Van Der Bok,  
Complainant.

Sworn at Paterson, this 20th  
day of April, 1926.

John F. Grossi,  
Clerk to Recorder.

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*Return to Writ*

## PASSAIC COUNTY COMMON PLEAS

10 In the matter of the application  
of Peter Zins, Nick Sherfris,  
Thomas Pappas, John Rice  
and Tony Saco, for review of  
their convictions before John  
F. Evans, Recorder of the  
City of Paterson.

**PETITION**

To the Honorable Joseph A. Delaney, Judge of  
the Court of Common Pleas of Passaic County.

20 The petitioners, Peter Zins, Nick Sherfris,  
Thomas Pappas, John Rice and Tony Saco, were  
convicted by John F. Evans, Recorder of the City  
of Paterson, on the 20th day of April, 1926, of vio-  
lating an Ordinance of the City of Paterson, en-  
titled "An Ordinance to Prohibit Gaming and the  
Keeping of Gaming Houses in the City of Pater-  
son, and to Provide for the Punishment thereof"  
passed August 19th, 1899, and were fined the sum  
of Five Dollars (\$5.00) each, which sum the peti-  
tioners then and there paid over to Clerk of the  
said Court, under protest.

30 Your petitioners are aggrieved by said convic-  
tions and claim that the same are illegal and un-  
just, because:

(1) The Court had no jurisdiction to try the  
said offense.

(2) The convictions constituted an invasion of

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rights guaranteed the petitioners under Article 1, Section 9, of the State Constitution.

(3) The complaint does not specify the Ordinance alleged to be violated.

(4) The evidence was insufficient to justify a conviction of petitioners of a violation of the said Ordinance.

(5) The Ordinance referred to in the complaint does not cover the offense set forth in the complaint. 10

(6) The complaint does not specify what amendment of the Ordinance set forth in the complaint was violated by the petitioners.

(7) The Ordinance under which conviction was had, was invalid, illegal, and void.

Your petitioners therefore pray that your Honor order the said John F. Evans to have brought before your Honor, the complaint, warrant, proceedings and record pertaining to petitioners' conviction aforesaid, to be reviewed by your Honor, and that your Honor make such further order as right and justice shall demand. 20

And your petitioners will ever pray, &c.

Peter Zins  
 Nick Sherfris  
 Thomas Pappas  
 Tony Saco  
 John Rice

by Edward F. Merrey, 30  
 Atty.

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State of New Jersey,  
County of Passaic, ss.

Edward F. Merrey, being duly sworn according to law, on his oath, deposes and says that the matters and things set forth in the foregoing petition are true to the best of his knowledge and belief.

Edward F. Merrey.

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Sworn to and subscribed before  
me this 27th day of April, 1926.

Frank J. Davies,

A Master in Chancery of New Jersey.

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*Return to Writ*

## PASSAIC COUNTY COMMON PLEAS

In the matter of the application  
of Peter Zins, Nick Sherfris,  
Thomas Pappas, John Rice  
and Tony Saco, for review of  
their convictions before John  
F. Evans, Recorder of the  
City of Paterson.

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**ORDER**

Application having been made to me, Judge of  
the Court of Common Pleas of Passaic County, by  
Peter Zins, Nick Sherfris, Thomas Pappas, John  
Rice and Tony Saco, to have the legality of their  
convictions on April 20th, 1926, of violating an  
Ordinance of the City of Paterson, entitled "An  
Ordinance to Prohibit Gaming and the Keeping  
of Gaming Houses, in the City of Paterson, and to  
Provide for the Punishment thereof" passed Aug-  
ust 19, 1899, by John F. Evans, Recorder of the  
City of Paterson, reviewed.

20

It is, on this 29th day of April, 1926, Ordered,  
that John F. Evans, Recorder of the City of Pat-  
erson, bring and have before me on the 22nd day  
of July, 1926, at ten o'clock in the forenoon, the  
complaint, warrant, proceedings and record had  
before him pertaining to the convictions by him  
of the said Peter Zins, Nick Sherfris, Thomas  
Pappas, John Rice and Tony Saco, on April 20th,  
1926.

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Jos. A. Delaney,  
Judge.



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on the happening of an event, to wit, Dice and Card Gaming was carried on or allowed for money or valuables, in violation of Section One of the said ordinance as above set forth.

Sergt. G. Van Der Bok,  
Complainant.

Sworn at Paterson, this 20th  
day of April, 1926.

John F. Grossi,  
Clerk to Recorder.

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*Return to Writ*

## PASSAIC COUNTY COMMON PLEAS

10 In the matter of the application  
of Ara Derbedogian, George  
Eliopulos, Andrew Farce,  
Thomas Thajkajy, John Tak-  
akjy, Stratis Gogras, Peter  
Sohakos, Emil Joekish,  
George Romy, and Peter  
20 Pipas, for review of their  
convictions before John F.  
Evans, Recorder of the City  
of Paterson.

**PETITION**

To the Honorable Joseph A. Delaney, Judge of the  
Court of Common Pleas of Passaic County.

20 The petitioners, Ara Derbedogian, George Eliopulos, Andrew Farce, Thomas Thajkajy, John Takakjy, Stratis Gogras, Peter Sohakos, Emil Joekish, George Romy, and Peter Pipas, were convicted by John F. Evans, Recorder of the City of Paterson, on the 20th day of April, 1926, of violating an Ordinance of the City of Paterson, entitled "An Ordinance to Prohibit Gaming and the Keeping of Gaming Houses in the City of Paterson, and to Provide for the Punishment thereof" passed August 19, 1899, and were fined the sum  
30 of Five Dollars (\$5.00) each, which sum the petitioners then and there paid over to Clerk of the said Court, under protest.

Your petitioners are aggrieved by said convictions and claim that the same are illegal and unjust, because:

(1) The Court had no jurisdiction to try the said offense.

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(2) The convictions constituted an invasion of rights guaranteed the petitioners under Article 1, Section 9, of the State Constitution.

(3) The complaint does not specify the Ordinance alleged to be violated.

(4) The evidence was insufficient to justify a conviction of petitioners of a violation of the said Ordinance.

(5) The Ordinance referred to in the complaint does not cover the offense set forth in the complaint. 10

(6) The complaint does not specify what amendment of the Ordinance set forth in the complaint was violated by the petitioners.

(7) The Ordinance under which conviction was had, was invalid, illegal, and void.

Your petitioners therefore pray that your Honor order the said John F. Evans to have brought before your Honor, the complaint, warrant, proceedings and record pertaining to petitioners' convictions aforesaid, to be reviewed by your Honor, and that your Honor make such further order as right and justice shall demand. 20

And your petitioners will ever pray, &c.

Ara Derbedogian

George Eliopulos

Andrew Farce

Thomas Thajkajy

John Takakjy

Stratis Gogras 30

Peter Sohakos

Emil Joekish

George Romy

Peter Pipas

by Edward F. Merrey,  
Atty.

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State of New Jersey,    )  
 County of Passaic,       ) ss.

Edward F. Merrey, being duly sworn according to law, on his oath, deposes and says that the matters and things set forth in the foregoing petition are true to the best of his knowledge and belief.

Edward F. Merrey.

10

Sworn to and subscribed before  
 me this 27th day of April,  
 1926.

Frank J. Davies,

A Master in Chancery of New Jersey.

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*Return to Writ*

## PASSAIC COUNTY COMMON PLEAS

In the matter of the application  
of Ara Derbedogian, George  
Eliopulos, Andrew Farce,  
Thomas Thajkajy, John  
Takakjy, Stratis Gogras,  
Peter Sohakos, Emil Joekish,  
George Romy, and Peter  
Pipas, for review of their  
convictions before John F.  
Evans, Recorder of the City  
of Paterson.

10

**ORDER**

Application having been made to me, Judge of  
the Court of Common Pleas of Passaic County, by  
Ara Derbedogian, George Eliopulos, Andrew  
Farce, Thomas Thajkajy, John Takakjy, Stratis  
Gogras, Peter Sohakos, Emil Joekish, George  
Romy, and Peter Pipas, to have the legality of  
their convictions on April 20th, 1926, of violating  
an Ordinance of the City of Paterson, entitled "An  
Ordinance to Prohibit Gaming and the Keeping  
of Gaming Houses, in the City of Paterson, and to  
Provide for the Punishment thereof" passed  
August 19, 1899, by John F. Evans, Recorder of  
the City of Paterson, reviewed.

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It is, on this 29th day of April, 1926, Ordered,  
that John F. Evans, Recorder of the City of Pater-  
son, bring and have before me on the 22nd day  
of July, 1926. at ten o'clock in the forenoon, the

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complaint, warrant, proceedings and record had before him pertaining to the convictions by him of the said Ara Derbedogian, George Eliopulos, Andrew Farce, Thomas Thajkajy, John Takakjy, Stratis Gogras, Peter Sohakos, Emil Joekish, George Romy, and Peter Pipas, on April 20th, 1926.

Jss. A. Delaney,  
Judge.

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F. 914 )  
413 to 423 )

p. n. g.

Decision Guilty

\$5 each

Bail

(Pd. under protest.)

All Paid

JFG

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Recorder's Court, City of Paterson  
State of New Jersey, }  
County of Passaic. } ss.:

30) Before me, John F. Evans, Recorder of the City of Paterson, Personally appeared Sergt. Gus Vanderbok, Police Department, of Paterson, who being duly sworn according to law, deposeth and saith that on the 19th day of April, 1926, Richard Minochian, Geo. Johnson, John Atenia, Billy Effsa, Peter George, Louis Agan, Paul Bazir, Jake Vanoian, Thos. Galos, John Ali, Edw. Sherinian in the City of Paterson, in the County of Passaic, aforesaid, did violate a provision of the ordinance of the Mayor and Aldermen of the City of Paterson, entitled "An Ordinance to Prohibit Gaming

*Return to Writ*

and the Keeping of Gaming Houses in the City of Paterson, and to Provide for the Punishment thereof," passed August 19th, 1899, and approved the same day, and the amendments thereof, in that the said defendants were present in the house, room or apartment that John Caracaras of the City of Paterson, did keep or maintain at, to wit, 40 Van Houten Street, Paterson, N. J., a room within said City, wherein betting, chances or gaming upon the happening of an event, to wit, Dice and card gaming was carried on or allowed for money or valuables, in violation of Section One of the said ordinances as above set forth. 10

Sergt. G. Van Der Bok,  
Complainant.

Sworn at Paterson, this 20th day  
of April, 1926.

John F. Grossi,

Clerk to Recorder. 20

*Return to Writ*

## PASSAIC COUNTY COMMON PLEAS

10 In the matter of the application  
of Richard Minochian,  
George Johnson, John Aten-  
ia, Billy Effsa, Peter George,  
Louis Agan, Paul Bazir,  
Jake Vanoian, Thomas Gal-  
los, John Ali, and Edward  
Sherinian, for review of their  
convictions before John F.  
Evans, Recorder of the City  
of Paterson.

**PETITION**

20 To the Honorable Joseph A. Delaney, Judge of the  
Court of Common Pleas of Passaic County.

The petitioners, Richard Minochian, George  
Johnson, John Atenia, Billy Effsa, Peter George,  
Louis Agan, Paul Bazir, Jake Vanoian, Thomas  
Gallos, John Ali, and Edward Sherinian, were  
convicted by John F. Evans, Recorder of the City  
of Paterson, on the 20th day of April, 1926, of  
violating an Ordinance of the City of Paterson,  
entitled "An Ordinance to Prohibit Gaming and  
the Keeping of Gaming Houses in the City of Pa-  
terson, and to Provide for the Punishment there-  
of" passed August 19, 1899, and were fined the  
sum of Five Dollars (\$5.00) each, which sum the  
petitioners then and there paid over to Clerk of  
the said Court, under protest.

30 Your petitioners are aggrieved by said convic-

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tions and claim that the same are illegal and unjust, because:

(1) The Court had no jurisdiction to try the said offense.

(2) The convictions constituted an invasion of rights guaranteed the petitioners under Article 1, Section 9 of the State Constitution.

(3) The complaint does not specify the Ordinance alleged to be violated.

(4) The evidence was insufficient to justify a conviction of petitioners of a violation of the said Ordinance. 10

(5) The Ordinance referred to in the complaint does not cover the offense set forth in the complaint.

(6) The complaint does not specify what amendment of the Ordinance set forth in the complaint was violated by the petitioners.

(7) The Ordinance under which conviction was had, was invalid, illegal, and void. 20

Your petitioners therefore pray that your Honor order the said John F. Evans to have brought before your Honor, the complaint, warrant, proceedings and record pertaining to petitioners' convictions aforesaid, to be reviewed by your Honor, and that your Honor make such further order as right and justice shall demand.

And your petitioners will ever pray, &c.

Richard Minochian

George Johnson

John Atenia

Billy Effsa

Peter George

Louis Agan

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Paul Bazir  
Jake Vanoian  
Thomas Gallos  
John Ali  
Edward Sherinian  
by Edward F. Merrey.

10 State of New Jersey, )  
County of Passaic, ) ss.

Edward F. Merrey, being duly sworn on his oath according to law, deposes and says that the matters and things set forth in the foregoing petition are true, to the best of his knowledge and belief.

Edward F. Merrey.

20 Sworn to and subscribed before  
me this 27th day of April,  
1926.

Frank J. Davies,  
A Master in Chancery of New Jersey.

*Return to Writ*

## PASSAIC COUNTY COMMON PLEAS

In the matter of the application  
of Richard Minochian,  
George Johnson, John  
Atenia, Billy Effsa, Peter  
George, Louis Agan, Paul  
Bazir, Jake Vanoian, Thom-  
as Gallos, John Ali, and Ed-  
ward Sherinian, for review  
of their convictions before  
John F. Evans, Recorder of  
the City of Paterson.

10

**ORDER**

Application having been made to me, Judge of  
the Court of Common Pleas of Passaic County, by  
Richard Minochian, George Johnson, John Atenia,  
Billy Effsa, Peter George, Louis Agan, Paul Bizar,  
Jake Vanoian, Thomas Gallos, John Ali, and Ed-  
ward Sherinian, to have the legality of their con-  
victions on April 20th, 1926, of violating an Or-  
dinance of hte City of Paterson, entitled "An Or-  
dinance to Prohibit Gaming and the Keeping of  
Gaming Houses, in the City of Paterson, and to  
Provide for the Punishment thereof" passed Aug-  
ust 19, 1899, by John F. Evans, Recorder of the  
City of Paterson, reviewed.

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30

It is, on this 29th day of April, 1926, Ordered,  
that John F. Evans, Recorder of the City of Pat-  
erson, bring and have before me on the 22nd day  
of July, 1926, at ten o'clock in the forenoon, the

*Return to Writ*

complaint, warrant, proceedings and record had before him pertaining to the convictions by him of the said Richard Minochian, George Johnson, John Atenia, Billy Effsa, Peter George, Louis Agan, Paul Bizar, Jake Vanoian, Thomas Gallos, John Ali, and Edward Sherinian, on April 20th, 1926.

Jos. A. Delaney,  
Judge.

10

At a Court of Common Pleas, holden at Paterson, in and for the County of Passaic, of the Term of April, A. D. Nineteen Hundred and Twenty-six, the following proceedings were had, to wit:

Thursday, September 23rd, 1926

The Court Met,

Present,

Hon. Joseph A. Delaney.

20

## PASSAIC COMMON PLEAS

In the matter of the review of  
the conviction of John Caracaras and twenty-nine others  
convicted by the Recorder of  
the City of Paterson for violations of the Ordinance to  
Prohibit Gaming, etc.

30

Mr. Edward F. Merrey and Mr. Frank J. Davies,  
associated Attorneys, appearing for the applicants.

*Return to Writ*

Mr. Benjamin J. Spitz, City Attorney, appearing for the City of Paterson.

After hearing Messrs. Merrey and Spitz, the Court reserved decision except as to John Caracaras, in whose case a reversal is consented to.

Briefs to be sent in.

At a Court of Common Pleas, holden at Paterson, in and for the County of Passaic, of the Term of January, A. D. Nineteen Hundred and Twenty-seven, the following proceedings were had, to wit: 10

Tuesday, March 29th, 1927

The Court Met,

Present,

Hon. Joseph A. Delaney.

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## PASSAIC COMMON PLEAS

10 In the matter of the review of  
 convictions of Richard Min-  
 ochian, George Johnson,  
 John Atenia, Billy Effsa, Pe-  
 ter George, Louis Agan, Paul  
 Bazir Jake Vanoian, Tho-  
 mas Gallos, John Ali, Ed-  
 ward Sherinian, Jack Kad-  
 dish, Joseph Mgrdechian,  
 Hogop Harabolerios, Ara  
 Derbeddogian, George Eliop-  
 pulos, Andrew Force, Tho-  
 mas Thajkajy, John Tarkak-  
 jy, Stratis Gogras, Peter  
 20 Sohakos, Emil Jackish,  
 George Romy, Peter Pikas,  
 Peter Zins, Nick Sherpis,  
 Thomas Pappas, John Rice  
 and Tony Saco, for viola-  
 tions of the Ordinance to  
 Prohibit Gaming.

This case having been continued until this time  
 the Judgment of Recorder's Court of the City of  
 Paterson is upheld.

30

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

I, John McCutcheon, Clerk of said County and  
 also Clerk of the County Courts thereof, the same

*Return to Writ*

being Courts of Record, Do Hereby Certify, that the foregoing are true copies of the Complaints and the Proceedings had thereon, in the matter of the review of convictions of Richard Minochian, et al, for violations of the Ordinance to Prohibit Gaming, as the same remains on file and of record in my Office.

In Testimony Whereof, I have here- 10  
 unto set my hand and affixed the seal  
 of the said Courts and County, at Pater-  
 son, this Twelfth day of May, A. D.,  
 Nineteen Hundred and Twenty-seven.  
 John McCutcheon,  
 Clerk.

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*Order Affirming Conviction*

(Filed December 28, 1927)

## PASSAIC COUNTY COMMON PLEAS

10 In the matter of the application  
of Richard Minochian,  
George Johnson, John Atenia,  
Billy Effsa, Peter George,  
Louis Agan, Paul Bazir,  
Jake Vanoian, Thos. Gallos,  
John Ali, Edw. Sherinian,  
Jack Kaddish, Jos. Mgrdechian,  
Hogop Harabolerios,  
Ara Derbeddogian, Geo. Eliopulos,  
Andrew Force, Thos. Thajkajy,  
John Tarkakjy, Stratis Grogas,  
Peter Sohakos, Emil Jockish,  
20 George Romy, Peter Pikas, Peter Zins,  
Nick Sherpis, Thos. Pappas,  
John Rice and Tony Saco, for review of their convictions before John F. Evans, Recorder of the City of Paterson.

**ORDER AFFIRMING CONVICTION**

30 These petitioners, Richard Minochian, George Johnson, John Atenia, Billy Effsa, Peter George, Louis Agan, Paul Bazir, Jake Vanoian, Thos. Gallos, John Ali, Edw. Sherinian, Jack Kaddish, Jos. Mgrdechian, Hogop Harabolerios, Ara Derbeddo-

*Order Affirming Conviction*

gian, Geo. Eliopulos, Andrew Force, Thos. Thajkajy, John Tarkakjy, Stratis Grogas, Peter Sohakos, Emil Jockish, George Romy, Peter Pikas, Peter Zins, Nick Sherpis, Thos. Pappas, John Rice and Tony Saco, having been convicted on April 20, 1926, by John F. Evans, Recorder of the City of Paterson of a violation of an ordinance of the City of Paterson, entitled, "An Ordinance to prohibit gaming and keeping of gaming houses in the City of Paterson and to provide for the punishment thereof," passed August 19, 1899, and approved the same day, and the amendments thereof, and each fined Five Dollars, which was paid under protest, and the said petitioners having on April 29, 1926, obtained an order from this Court to review their said execution, and the same having come on for argument before me in the presence of counsel for the respective parties on September 23, 1926, and having duly considered the said conviction, and being of the opinion that the same is legal,

It is on this twenty-fourth day of September, 1926, Ordered that the aforesaid convictions of the said Richard Minochian, George Johnson, John Atenia, Billy Effsa, Peter George, Louis Agan, Paul Bazir, Jake Vanoian, Thos. Gallos, John Ali, Edw. Sherinian, Jack Kaddish, Jos. Mgrdechian, Hogop Harabolerios, Ara Derbedogian, Geo. Eliopulos, Andrew Force, Thos. Thajkajy, John Tarkakjy, Stratis Grogas, Peter Sohakos, Emil Jockish, George Romy, Peter Pikas,

*Order Affirming Conviction*

Peter Zins, Nick Sherpis, Thos. Pappas, John Rice  
and Tony Saco be affirmed and upheld.

Jos. A. Delaney,  
Judge of the Court of Common Pleas.

A True Copy,

Dated December 28th, A. D. 1927.

10           John McCutcheon, Clerk,

by P. F. Cunningham,  
Special Deputy Clerk.

20

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*Reasons*

(Filed June 8, 1927)

NEW JERSEY SUPREME COURT

Richard Minochian, George Johnson, John Atenia, Billy Effsa, Peter George, Louis Agan, Paul Bazir, Jake Van- oian, Thos. Gallos, John Ali, Edw. Sherinian, Jack Kad- dish, Jos. Mgrdechian, Hog- op Harabolerios, Ara Der- beddogian, Geo. Eliopulos, Andrew Force, Thos. Thaj- kajy, John Tarkakjy, Stratis Grogas, Peter Sohakos, Emil Jockish, George Romy, Peter Pikas, Peter Zins, Nick Sher- pis, Thos. Pappas, John Rice and Tony Saco,	} On Certiorari	10
Prosecutors,		
vs.		
City of Paterson,		
Defendant.		20

**REASONS**

The prosecutor assigns the following reasons for setting aside the order of the Court of Common Pleas upholding the conviction under review, and for setting aside said conviction. 30

*Reasons*

1. The ordinance under which the conviction was had is invalid, illegal and void because:

(a) the Board of Aldermen of the City of Paterson had no power to make such ordinance;

(b) the said ordinance is in conflict with Section 9 of Article 1 of the Constitution of New Jersey;

10 (c) it puts upon a defendant the burden of proving his innocence of the offense charged against him;

(d) it is unreasonable and oppressive.

2. The complaint did not set out the title of the ordinance and number of section which defendants were charged with violating.

3. The conviction is that of a crime, and defendants were not indicted by a Grand Jury.

20 4. The Recorder of the City of Paterson had no jurisdiction to try the defendants, (prosecutors) for the offense charged against them.

5. The ordinance referred to in the complaint does not cover the offense set out in the complaint.

6. The complaint does not specify what amendment of the ordinance in the complaint was violated.

7. The Court of Common Pleas erred in not setting aside said conviction for one or more of the reasons set forth in the petition for review.

30

Edward F. Merrey,

Attorney of Prosecutors.

*Ordinances***AN ORDINANCE**

To amend an ordinance entitled "An ordinance to prohibit gaming and keeping of gaming houses in the City of Paterson and to provide for the punishment thereof," passed Aug. 19, 1899.

The Board of Aldermen of the City of Paterson do ordain as follows:

Section 1—That Section one (1) of an ordinance entitled "An ordinance to prohibit gaming and keeping of gaming houses in the City of Paterson and to provide for the punishment thereof," passed Aug. 19, 1899, be and the same is hereby amended so as to read as follows: 10

"Section 1—That no person or persons shall keep or maintain or be present in any house, room or apartment within this city wherein betting, pool selling or chances or gaming of any kind upon the event of any horse race or races between horses or upon the happening of any event is carried on or allowed, nor shall any person or persons keep any house, room or apartment, or be present therein, wherein gaming for money or valuables is allowed or carried on in this city; provided, that where a person is innocently present, without any interest in the gaming, and this is proved to the satisfaction of the recorder, he shall be acquitted." 20

Section 2—That Section two (2) of said ordinance be and the same is hereby amended so as to read as follows: 30

"Section 2—That any person or persons convicted of violating any of the provisions of this

*Ordinances*

ordinance shall, upon conviction, thereof, be punished by a fine not exceeding Fifty Dollars (\$50.00) or by imprisonment not exceeding thirty days, or both.

Passed May 15, 1916.

John C. Bush,  
President, Board of Aldermen.

Approved May 16, 1916.

10 Amos H. Radcliff,  
Mayor.

Attest:

Samuel R. Orcutt,  
City Clerk.

20 I, Edward DuPree, Clerk to the City of Paterson, and to the Board of Aldermen of said City, hereby certify, that the attached is a true copy of an Ordinance passed by said Board on May 15th, 1916, and approved by the Mayor on May 16th, 1916, as copied from and compared with, the original now remaining on file in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the City of Paterson, this 27th day of December, 1927.

Edward Du Pree,  
City Clerk.

*Substitution of Counsel***SUBSTITUTION OF COUNSEL**

Frank J. Davies was substituted for Edward F. Merrey as attorney for and of counsel with prosecutors, and Charles H. Roemer was substituted for Benjamin Spitz as attorney for and of counsel with defendant.

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*Opinion of Supreme Court*

(Filed November 30, 1928)

NEW JERSEY SUPREME COURT

No. 233, January Term, 1928

	Richard Minochian, George	}
	Johnson, John Aetinia and	
	Billy Effsa, et als.,	
	Prosecutors,	
10	vs:	
	City of Paterson, et als.,	}
	Defendants.	

**OPINION OF SUPREME COURT**

Before Justices Trenchard, Kalisch and Katzenbach.

For the Prosecutors, Edward F. Merrey.

20 For the Defendants, Benjamin J. Spitz.

30 The opinion of the court was delivered by, Kalisch, J. The prosecutors were convicted in the recorder's court of the City of Paterson, upon the following complaints: "Before me, John F. Evans, Recorder of the City of Paterson, personally appeared Sergt. Gus Van Der Bok, Police Department of No. Paterson, New Jersey, who being duly sworn according to law deposeth and saith that on the 19th day of April, 1926, Richard Minochian, George Johnson, John Aetinia, Billy Effsa, Peter Georger, Louis Agan, Paul Bazir, Jake Vanorin, Thomas Gassis, John Ali, Edward Scheriniar, in the City of Paterson, County of Passaic aforesaid, did violate a provision of the ordinance of the Mayor and Aldermen of the City of Paterson, entitled 'An Ordinance to prohibit gaming and the keeping of gaming houses in the City of Paterson, and to provide for the punishment thereof,'

*Opinion of Supreme Court*

passed August 18, 1899, and approved the same day and the amendments thereof, in that said defendants were present in the house, room or apartment that John Caracaras of the City of Paterson, did keep or maintain at, to wit 40 Van Houten Street, Paterson, New Jersey, a room within said city wherein betting, chances or gaming upon the happening of an event, to wit, Dice and Card Gaming was carried on or allowed for money or valuables, in violation of Section one of the said ordinance as above set forth." 10

(Signed), Sergt. G. VanRerBok,  
Complainant.

Sworn at Paterson, this 20th  
day of April, 1926,

John F. Grossi,  
Clerk to Recorder.

The complaint is very inartificially drawn, but that circumstance of itself does not render the complaint invalid, so long as it apprises the accused of the nature of the charge brought against him. 20

Section one, of the amended ordinance, reads, as follows: "That no person or persons shall keep or maintain or be present in any house, room or apartment, within this city, wherein betting, pool selling or chances or gaming of any kind, upon the event of any horse race or races between horses, or upon the happening of any event carried on or allowed, nor shall any person or persons keep any house, room or apartment or be present therein, wherein gaming for money or valuables is allowed or carried on in this city; provided, that where a person is innocently present 30

*Opinion of Supreme Court*

without any interest in the gaming, and this is proved to the satisfaction of the recorder, he shall be acquitted."

The recorder having found the prosecutors guilty *inter alia*, adjudges "and it not appearing to the court from the testimony, that the prosecutors were not innocently present without any interest in the gaming, were sentenced to pay a fine of five dollars each."

10 The record of the Recorder's Court further shows that the fines were paid under protest.

The prosecutors, under the statute of 1908, page 442, applied to the president judge of the court of common pleas to have the legality of their several convictions reviewed, and that tribunal ordered that the complaint, warrant, proceedings of record of conviction had in the recorder's court to be brought before him so that the legality of the proceedings and conviction there had, may be reviewed and determined by him, and according to the record of the court of common pleas, it appears that after the hearing, and a postponement of the decision of the court, the following minute was entered upon the record: "This case having been continued until this time, the judgment of the recorder's court of the City of Paterson is upheld."

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30 The prosecutors then sued out of the Supreme Court a writ of certiorari directed to the Court of Common Pleas at Passaic County, and in obedience to the writ, the common pleas court has sent to this court, under its hand and seal, all the proceedings and the order made by it, in the cause, and from which it appears, as above stated, that the court's order was, that "the judgment of the

*Opinion of Supreme Court*

recorder's court of the City of Paterson is upheld."

We have reached the conclusion that the writs should be dismissed for reasons we will now proceed to state.

The statute of 1908 *supra*, which is invoked by the prosecutors as warranting the removal of the record of their conviction in the recorder's court to the court of common pleas is entitled, A supplement to an Act entitled, "An Act relating to courts having criminal jurisdiction and regulating proceedings in criminal cases." (Revision of 1898) approved June 14, 1898. The statute in substance, provides that upon application made to a justice of the Supreme Court holding the Circuit in each of the counties of this State, or the president judge of the Court of Common Pleas for said county for any person who has been convicted in any summary conviction had before any police judge, justice of the peace, mayor, recorder or other magistrate in any city, town, township or borough for the violation of any ordinance at any such city, town, township or borough, who desires to have the legality of the conviction reviewed, such justice of the Supreme Court or president judge of the Court of Common Pleas, shall order the complaint, warrant, proceedings and record of conviction, to be forthwith brought before him, that the lagality of such proceedings and conviction may be reviewed and determined, and if such proceedings and conviction shall thereupon be found to be illegal, forthwith set aside the same and order the discharge of the person so convicted from custody.

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*Opinion of Supreme Court*

The language of the statute is too clear and explicit to need any argument to demonstrate that the employment of the words in the statute, "to order the discharge of the person so convicted from custody," that the benefit of the statute was only to be extended to a person who was convicted in a summary proceeding, and who was in actual custody. The fact in the instant case is that none of the prosecutors was in custody, and therefore, none was entitled to a review of his conviction, by virtue of this statute. Each of the prosecutors paid his fine, and though he paid it under protest, that circumstance did not have the effect of being tantamount to a situation of a person being in actual custody.

Before proceeding any further to discuss the intent and scope of the statute, we find it convenient here, to first consider the problem which obtrudes itself upon the surface of this legislative act, and that is, as to whether or not the procedural remedy provided for by the statute, in substance, invests a judge of the Common Pleas, with the jurisdictional power to grant a writ of certiorari in the cases designated by the statute. We are mindful, that the jurisdictional question has not been raised or argued in the brief of counsel of prosecutors, nevertheless, since the facts themselves present the question, and since counsel are not precluded from raising it in the event of an appeal being taken, even though the jurisdictional question was not raised and passed upon by this court, we deem it of sufficient importance to express our views in regard to the nature and scope of the statute and of the remedy provided.

*Opinion of Supreme Court*

In *Green v. Heritage*, 64 N. J. L., page 567, which case dealt with a provision of the District Court Act of 1898, P. L. 1918, section 206, providing for an appeal to the Circuit Court, in these words: "if either party in any such action, or proceeding shall be dissatisfied with the determination or direction of said court in any point of law, or upon the admission or rejection of evidence, such party may appeal from the same to the Circuit Court of the county wherein said District Court is held," Van Syckel, J., speaking for the Court of Errors and Appeals, at page 568, says: "There can be no question that, although the proceedings by which the judgment of the District Court was removed into the Circuit Court is styled in the District Court act of 1898, "an appeal," the power conferred is identical with that which was exercised by the Supreme Court through its prerogative writ of certiorari. The power granted is the **certiorari** power, and must be dealt with as such.

"McCullough vs. Essex Circuit Court, 30 Vroom, 103."

"The question now presented was most ably and elaborately discussed by the late Chief Justice Beasley as long ago as 1865, in *Dufford vs. Decue*, 2 Vroom, 302, and the conclusion reached has never been challenged and I am confident cannot be successfully controverted."

"After showing that prior to the adoption of the constitution of 1844 our Supreme Court was empowered to have cognizance of pleas, civil, criminal and mixed, as fully and amply to all intent and purpose whatsoever as the courts of Queen's Bench, Common Pleas and Exchequer

*Opinion of Supreme Court*

within Her Majesty's Kingdom of England", he says: "That at the time of the formation of the constitution of 1844 the ordinary common law original jurisdiction of the Supreme Court was shared by the respective county Circuit Courts and to a definite extent by the Court of Common Pleas; but the appellate and extraordinary jurisdiction with which the Supreme Court as the successor of the King's Bench, has been originally vested, remained centered still exclusively in that tribunal, with the single anomaly that the act constituting the Circuit Court had conferred upon them the power to review suits originating in the Justices' Courts by the instrumentality of the writ of **certiorari**."

After declaring that no change in this respect was effected by the constitution of 1844, he further says: "It was never supposed that either the Common Pleas or the County Circuits were possessed of any more than a concurrent common law jurisdiction with the Supreme Court within the limits of their respective counties in the ordinary line of actions **inter partes**. It is certain that no greater power than this was ever claimed for them. In a defined measure they each shared, practically, with the Supreme Court a portion of its ordinary jurisdiction, and this was all, for, so far as is known, no attempt was ever made to bring before either of those tribunals any matter which was not embraced within the limit of this power. Indeed, the express authorization of the Circuit Court to use in an enumerated class of cases, the writ of certiorari, (that is, certiorari to Justices' Court) excludes in a very conclusive manner all claim to the exercise of analagous preroga-

*Opinion of Supreme Court*

tives and likewise evinces that the several terms conferring authority upon those courts did not import to them anything more than a portion of what I have called the ordinary jurisdiction of the Supreme Court. I think, therefore it is clear that at the time the new constitution was framed these general terms so often used in conferring on the local courts a partial jurisdiction, co-extensive with that of the Supreme Court had acquired a definite and settled meaning, and that such meaning was that the inferior courts should have a concurrent cognizance over actions arising within the county in the usual course of law between parties. And in this sense, in my opinion, were the words used in the constitution of this state, and this construction seems to me much fortified when we remember that the distinction between the ordinary and prerogative jurisdiction of the Supreme Court has always been clearly and sharply defined. In England, the ordinary jurisdiction of the King's Bench was shared in a large measure with the Common Pleas, and in a lesser degree with some of the other courts. But the authority which was exercised by means of the various writs of **mandamus, quo warranto, certiorari**, and others of a similar character belong to this high tribunal alone \* \* \*

"All these great powers were, by the ordinance of our first provincial governor, transferred to the Supreme Court, and were exclusively exercised by that tribunal from that time to the era of the new constitution; and it was these extra-ordinary powers which belong to it as a Supreme Court, which were not, as I think, intended to be granted to the Circuit Court by that instrument \*\*\* Besides, it is obvious that the same course of reasoning

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*Opinion of Supreme Court*

which will clothe the county courts with jurisdiction in the class of cases above referred to, will also clothe them with appellate jurisdiction by writ of error to the Common Pleas, for if concurrent jurisdiction with the Supreme Court implies, and is equivalent to co-ordinate and co-extensive jurisdiction, these Circuit Courts cannot consistently be denied a power of review."

10 And at page 571, Van Syckel, J., further quoting says: "In the language of Chief Justice Beasley, this appellate and extraordinary jurisdiction, exercised by the writ of **certiorari**, centers exclusively, in the Supreme Court, and it cannot be taken away or impaired by adverse legislation."

20 In *Flanagan v. Plainfield*, 44 N. J. L., page 118, Van Syckel, J., speaking for the Supreme Court at page 132, says: "If by statute the right to the writ of **certiorari** in these cases can be bestowed upon the Circuit Court, no constitutional barrier opposes the right of the law-maker to arm them with writs of **mandamus** and **quo warranto**."

"The distinguishing feature of the King's Bench was the authority which it alone exercised by means of the writs of **certiorari**, **mandamus** and **quo warranto**."

30 "That our constitution was framed to perpetuate in our Supreme Court the same ample and exclusive power, is clearly shown by the opinion of the Chief Justice in *State, Dufford, pros. vs. Decue*, 2 *Vroom* 302."

"The Supreme Court is the sole depository of these prerogative writs."

"The single exception to the rule is mentioned by the Chief Justice, viz: suits originating in Justices' courts. The reason for the exception is that

*Opinion of Supreme Court*

at the time of the formation of the constitution of 1844, the act constituting the Circuit Courts had conferred upon them the power to review by **certiorari** suits originating in Justices' courts."

"The constitution makes this court unassailable by legislation."

The reason for the existence of the exception referred to by the learned Justice is to be found in the constitution of 1844, Article X, Section 1, **inter alia**, declares: "The several courts of law and equity, except as herein otherwise provided, shall constitute with the like power and jurisdiction as if this constitution had not been adopted."

10

It thus appearing, that the jurisdiction and power of the Circuit Courts to grant writs of certiorari in actions originating in justices' courts having been conferred upon said Circuit Court, by the law-making power of this State, before the adoption of the constitution of 1844, and which jurisdiction and power of the Circuit Courts were continued by the constitutional provisions quoted, gave rise to the exception, characterized by Chief Justice Beasley, in *Dufford v. Decue*, **supra**, as an anomaly by which the Supreme Court is passed by, since by force of a constitutional provision, the final judgment of a Circuit Court may be directly taken to the Court of Errors and Appeals.

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But no such jurisdiction or power was ever conferred to the Court of Common Pleas, and, therefore, the fact that a judgment of the Court of Common Pleas must be reviewed by the Supreme Court, has no material significance.

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This is clearly demonstrated by *Van Syckel, J.*, in *Green v. Heritage*, **supra**, at page 571, where the learned Justice, in commenting upon the view

*Opinion of Supreme Court*

taken by the Supreme Court, in *Reily v. Second District Court of Newark*, 34 Vroom, p. 541, says: "the suggestion made" in that case, "in support of the legislation" before it under review, "that the suits may be brought in the District Court are such as might be instituted in the Circuit Court, and if there instituted, the Supreme Court could not review the decision of that tribunal by **certiorari**; nor at all, if the litigant chose to carry his grievance directly to the Court of Errors. This shows that the Supreme Court has no exclusive jurisdiction over the questions involved."

10

"The obvious fallacy of this reasoning is that it fails wholly to distinguish between ordinary and appellate jurisdiction."

"The distinction is so sharply drawn in *Dufford v. Decue*, that it is unnecessary to amplify argument upon this point."

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"When a suit is instituted in the District Court the right of the Supreme Court attaches through its appellate and extraordinary jurisdiction, to supervise the proceedings of the inferior court."

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Germane to this pronouncement are the remarks of Chief Justice Ewing, in *Martin v. Thompson*, 10 N. J. L. (5 Halstead) 142, decided in 1828, relating to the jurisdiction of the Court of Common Pleas in cases of appeal, by virtue of the statute of 1820, in the course of which, in construing that statute, at page 143, the learned jurist says: "But it is erroneous to suppose that jurisdiction of this court (Supreme Court) on **certiorari** was thereby transferred to the Court of Common Pleas, or that the same grounds of reversal were to be applied and to prevail in the one court as in the other, or that relief was to be given in the same way in the

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Court of Common Pleas as had formerly been done in this court. When relief was provided in matters of law and fact, it was such relief as accords with the nature of another trial, not such as belongs peculiarly to a writ of error." \* \* \* "It is clear then, that in the present case it is not regular for the Court of Common Pleas merely to inspect the transcript returned to them by the Justice, and to reverse or set aside the proceedings, because, on certiorari, the Supreme Court has done the like." 10

The statute of 1908 has been held to be constitutional, in *Newark v. Kazinski*, 86 N. J. L., page 59.

The views expressed by Mr. Justice Trenchard, speaking for the Supreme Court, holding the act to be constitutional, were the bases of the judgment to a like effect, in *City of Paterson v. Cohen*, which latter case was affirmed by the Court of Errors and Appeals, in 88 N. J. L., page 369. The constitutionality of the act of 1908, therefore, is no longer open for debate. 20

It is quite clear from a plain reading of the statute of 1908, and the procedure which follows the order for review, as provided by said act, that the order and procedure thereunder, are conspicuously unlike the function of a writ of certiorari and the procedure which follows the writ.

It is to be observed, that the title of the statute of 1908 is "A supplement to an act relating to courts having criminal jurisdiction and regulating proceedings in criminal cases." 30

It would have been more logical if the title were a supplement to the habeas corpus act. It has been repeatedly decided by our courts that the

*Opinion of Supreme Court*

procedure, for the violation of a city ordinance providing for the payment of a fine, and in default of payment, imprisonment, is of a purely civil nature, or at most, of a **quasi** criminal or **quasi** civil character.

10 The history of the situation which led to the enactment of the statute of 1908 seems to have been entirely overlooked. Its origin finds some explanation in Chapter 229, P. L. 1908, page 443. This legislative act was enacted at the same time as was the statute, under consideration, and seems to be corollary to chapter 228. The companion statute provides for the release of persons under confinement in county jails in default of paying fines for violation of any ordinance, etc. It becomes therefore, quite obvious that the legislative intent was to provide a remedy by a method of review whereby a person wrongfully detained in custody could have speedy relief. Such relief was  
20 not always attainable by either a writ of **certiorari** or writ of **habeas corpus**.

In a **certiorari** proceeding, where a penalty has been imposed, the prosecutor is required to give a bond, and if unable to furnish one must languish in custody until his case is argued and decided, and the decision prove favorable to him.

In a **habeas corpus** proceeding unless the irregularity appeared upon the face of the complaint, or of the commitment, no relief could be granted.

30 To remedy this situation the legislature in 1885, passed an act entitled, "A supplement to an act entitled, an act for preventing the injury of illegal confinement and better securing the liberty of the people." (Revision) approved March 1874, P. L. 1885, page 286. This legislation conferred

*Opinion of Supreme Court*

upon the president judge of the Common Pleas court concurrent jurisdiction with the justices of the supreme court to grant a writ of habeas corpus in all criminal cases, where any person may be confined in prison or detained in custody, and to hear and determine the same, in the same manner as though the application had been made before a justice of the supreme court.

The second paragraph of section 2 of the habeas corpus act, 2 C. S. page 2640, in terms, expressly provides, that a person committed or detained by virtue of the final judgment or decree of any competent tribunal of criminal or civil jurisdiction, or by virtue of any execution issued upon such judgment or decree, unless such judgment or decree be founded on contract, shall not be entitled to prosecute a writ of habeas corpus. 10

It becomes therefore, manifest that chapter 228 of the laws of 1908, *supra*, was enacted in aid of the habeas corpus act, so as to broaden the right of review of proceedings, after a final judgment had been rendered by a competent tribunal, and by or through which judgment a person is being unlawfully detained in custody. 20

Under the statute of 1908, the judge is not limited to a review of the sufficiency of a complaint, or to the regularity of the commitment, but he is fully empowered to review the entire proceedings had in a court below, and to determine the legality of the conviction, and if he finds the conviction to be illegal, to discharge the person from custody. 30

The writ of habeas corpus is not a prerogative writ.

*Opinion of Supreme Court*

There is no constitutional inhibition of the legislative power to authorize the allowance of such a writ by a judge of the court of common pleas.

The statute under which the present proceedings were instituted, as has already been pointed out, applies only to a situation where a person is in actual custody, and not otherwise.

10 This apparently is not the case here. None of the persons, whose cases were reviewed, under the order, was in custody, and each had paid his fine.

The writs are dismissed, with costs.

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*Rule Denying Re-hearing*

(Filed May 6, 1929)

NEW JERSEY SUPREME COURT

No. 233 January Term, 1928

Richard Minochian, et als.,	}
Prosecutors,	
vs.	
City of Paterson,	
Defendant.	

10

**RULE DENYING RE-HEARING**

On petition for re-hearing.

Before JJustices Trenchard, Kalisch and Lloyd.

For the Prosecutor, Edward F. Merrey.

For the Defendant, Benjamin J. Spitz.

Per Curiam:

The petition for a re-hearing is denied.

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80

*Rule Affirming Judgment*

## NEW JERSEY SUPREME COURT

Richard Minochian, George Johnson, John Aetinia and Billy Effsa, et als., Prosecutors,	}	On Certiorari
vs.		
City of Paterson, et als., Defendants.		

10

## RULE AFFIRMING JUDGMENT

20 The Court having inspected the transcript and proceedings of the Court of Common Pleas of the County of Passaic, returned with the Certiorari in this cause, and the reasons for reversing the judgment below, and heard the argument of counsel therein, and having duly considered the same:

It is on this 26th day of December, 1928, ordered that the judgment of the Court of Common Pleas of the County of Passaic be in all things affirmed with costs, and the record be remitted to the Court below to be proceeded with according to law and the practices of said Court.

On motion of Charles H. Roemer, Esquire, Attorney for defendants.

A true copy,

30 Fred L. Bloodgood,  
Clerk.





## New Jersey Court of Errors and Appeals

Richard Minochian, et als., Prosecutors-Appellants, vs. State of New Jersey and City of Paterson, Defendants.	}	On Certiorari.
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### Brief for Prosecutors-Appellants

The prosecutors-appellants were convicted by the Recorder of the City of Paterson of being present in a place where gaming is carried on (Case page 7, line 16) in violation of an ordinance entitled, "An Ordinance to Prohibit Gaming and the Keeping of Gaming Houses in the City of Paterson, and to Provide for the Punishment thereof", passed August 19, 1899, and approved the same day, and the amendments thereof.

An amendment to the said ordinance under which the prosecutors were convicted is entitled as follows, "An Ordinance to Amend an Ordinance entitled 'An Ordinance to Prohibit Gaming and Keeping of Gaming Houses in the City of Paterson and to Provide for the Punishment thereof'", passed May 15, 1916, and approved the next day. Section 1 thereof provides as follows:—

"That no person or persons shall keep or maintain or be present in any house, room or apartment within this city, wherein betting, pool selling or chances or gaming of any kind upon the event of any horse race

or races between horses or upon the happening of any event is carried on or allowed, nor shall any person or persons keep any house, room or apartment, or be present therein, wherein gaming for money or valuables is allowed or carried on in this city; provided, that where a person is innocently present, without any interest in the gaming, and this is proved to the satisfaction of the recorder, he shall be acquitted." (Case, page 39)

There are twenty-nine prosecutors, and for the sake of convenience, the record was sent up in four parts by the Clerk of the Recorder's Court, all of which are printed in the state of the case. They are similar so that a perusal of one is all that is necessary in order to understand the case.

#### I.

The conviction was reviewed by the Common Pleas Court of Passaic County and upheld but no opinion was rendered (Case p. 34). A writ of certiorari to review the judgment of the Passaic Common Pleas Court was then taken in the Supreme Court and was there dismissed, the court assuming that the only right to review the decision by the Court of Common Pleas was by virtue of the provisions of P. L. 1908, page 442 (see opinion, case 42). Under that section, a defendant must be in actual custody before he may avail himself of a review by the Common Pleas Court of his conviction below. The section is as follows:

"Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. Upon application to the justice of the Supreme Court holding the Circuit Court in each of the counties of this State, or the president judge of the Court of Common Pleas for such county, by any person who has been convicted in any summary conviction had before any police justice, justice of the peace, mayor, recorder or other magistrate in any city, town, township or borough, for the violation of any ordinance of any such city, town or township or borough, who desires to have the legality of his conviction reviewed, such justice of the Supreme Court or president judge of the Court of Common Pleas, shall order the complaint, warrant, proceedings and record of conviction to be forthwith brought before him, that the legality of such proceedings and conviction may be reviewed and determined; and if such proceedings and conviction shall thereupon be found to be illegal, forthwith to set aside the same and to order the discharge of the person so convicted from custody."

But the Common Pleas Court has also the right to review a police court conviction, whether the defendant be in custody or not under P. L. 1895, page 764 as amended P. L. 1898, page 534 and found in the compiled statutes, Volume I at page 408. The section is as follows:

"All judgments or other judicial proceedings of any city judge, police court or other inferior court, had for or on account of any alleged violation of city ordinances

or ordinances of city boards of health, whether had with or without a trial by jury, shall be reviewed by writ of certiorari, in accordance with the rules and practice of the supreme court, or on application for what purpose, made by the defendant, within thirty days after such judgment has been rendered, the court of common pleas of the county in which such judgment was rendered may order such judgment and all the proceedings had in the case, to be certified to said court, by the court in which such judgment was had, and upon return being made to said order, said court of common pleas may review said judgment and all the proceedings had in the case, and set the same aside if said court shall find the same to be illegal."

The Supreme Court was no doubt led astray by the brief of prosecutors' counsel which erroneously cited P. L. 1908, page 442 as the authority for the review. This was called to the court's attention after the opinion dismissing the writ was rendered and a re-hearing was asked, but denied. (Case page 57.)

Prosecutor therefore asserts that the Court of Common Pleas had authority to review the conviction whether or not the defendant was in custody by virtue of P. L. 1895, page 764, as amended P. L. 1898, page 534, and set forth above, and that the Supreme Court erred in dismissing the writ upon that ground.

## POINT I

**THE COURT OF COMMON PLEAS HAD THE POWER AND AUTHORITY TO REVIEW THE DECISION OF THE POLICE JUSTICE IN THE COURT BELOW.**

The prosecutors-appellants obtained a review of their conviction before the Police Judge by the Court of Common Pleas under P. L. 1895, p. 764, as amended in P. L. 1898, p. 534, and found in the Compiled Statutes, Volume 1, p. 408, and quoted hereinabove, and under this section the Common Pleas Court had the right to review whether or not the defendants below were in custody. The Statute is plain and covers both situations whether the defendant be in custody or at liberty. The relief which the prosecutors - appellants sought was under this section.

Under P. L. 1908, p. 442, a right to review by the Common Pleas Court is given only when the defendant below is in custody. The Supreme Court assumed that the prosecutors-appellants sought the review of their conviction under this section.

Counsel for City of Paterson made no point in the Supreme Court that the Common Pleas had no jurisdiction to review these convictions. They admitted this right. The Supreme Court itself raised this point without giving counsel for either side an opportunity to argue it. Had this been done the attention of the court would have been immediately drawn to the proper statute. The recital in the brief below which referred to the wrong statute was by way of recital only and not

put forth in the part of the brief devoted to argument.

The relief sought was under the section, P. L. 1895, p. 764, as amended in P. L. 1898, p. 534, and found in the Compiled Statutes, Volume 1, p. 403, which permits a review by the Common Pleas Court whether the defendants be in custody or not, and the Supreme Court therefore erred in dismissing the writ on the ground that the Common Pleas Court had no right to review the decision of the Police Judge unless the defendants were in custody.

The Supreme Court never passed upon the substance of the points which are hereinafter raised and argued.

## II.

### **THE COMPLAINANT DOES NOT SET FORTH THE TITLE OF THE ORDINANCE OF WHICH THE DEFENDANTS WERE CONVICTED OF VIOLATING EXCEPT BY REFERRING TO THE AMENDMENTS OF THE ORIGINAL ORDINANCE.**

This being a summary conviction, it must comply with certain formalities, and in the event that any of these are absent, the conviction must be set aside. The courts of this State have been very prompt in all cases to set aside these convictions unless they comply with all the formalities. There is good reason for so doing, inasmuch as the defendant does not get a jury trial. The case of Keeler vs. Milledge, 24 New Jersey Law, page 146, sets out the requisites of such a conviction:

“Where a special power is given to a magistrate by statute to convict an offender in a summary manner without a trial by jury, it must appear that he has strictly pursued the power. 1 Burns’ Justice 409. The record should show upon its face everything necessary upon general principles to constitute a legal conviction. Handlin ads. State, 1 Har. 97; and see forms in Ewing’s Justice 226, (ed 1839); 1 Burns’ Justice, 410.

“It should set out the offence charged, and show what ordinance, or section of an ordinance, was alleged to have been violated. It should show not only legal notice given, but also whether the defendant was present or absent; and if present, that the complaint was read to him, and his answer to it. It should set out not only the names of the witnesses examined, but at least the subsequence of the testimony, that the court above may judge of its sufficiency to convict. *Rex vs. Vipont*, 2 Burrows 1163; *Rex vs. Killett*, 4 Burrows 2063. And it should appear with precision, by the record, of what offence the defendant is convicted.”

Another case is *Buck vs. Danzenbacker*, 37 N. J. L. page 359:

“The record of a conviction, under a general statute, must show, on its face, everything necessary upon general principles to constitute a legal conviction; it should set out such facts as are necessary to consti-

tute a statutory offence; that the defendant was convicted thereof, upon what evidence he was convicted, and the judgment of forfeiture."

These cases set forth the universal rule which is quite similar in all the states, and which requires convictions of this character to a very strict formality.

A late statute, (Chapter 77 of P. L. 1910, page 112; Comp. St. page 4007) dispenses with considerable of this formality, however, and is discussed in the case of Rafferty vs. Court of Common Pleas of Passaic County, 133 At. Rep. 524, in which the very ordinance which we are attacking here was under consideration, and while the statute referred to relieves the magistrate from inserting certain formal matters in the record of conviction, the old common law is still in force with respect to setting forth the section and title of the ordinance.

In this particular case the title set out in the complaint is the title of the original ordinance. The title of the amended ordinance is not set out nor is there any indication in the complaint as to when the amendment was passed. The amended ordinance is first identified in the conviction. The defendants at the trial had no means of knowing the ordinance which they are accused of violating.

We think, therefor, the conviction is improper because the complaint did not set out as required, the number of the section and the title of the ordinance under which the conviction is had. The

complaint is bad for the same reasons and the complaint being bad, the entire conviction should be set aside.

We do not make this point simply to take advantage of a technicality. The failure of the complaints to inform the defendants as to what section of the ordinance they were charged with violating was injurious to them. While the record is quite bare, yet there is enough to show exactly what happened in this case. Twenty-nine men were arrested at one time at one place. It could only have been the result of what is known as a "police raid." They were crowded in police patrol wagons and taken to a police station and put in cells where they spent the night if they could not obtain bail. In the morning they were taken before the Recorder and stood up in line and two or three policemen told their story. One defendant is examined (see record of conviction case page 6, line 25). They are promptly convicted and sentenced, all but one of them without having had a word to say in their own defense.

The original ordinance did not make it an offence to merely be present at a gambling house and a hurried reference to the complaint and the ordinance (the only kind permitted in a police court) would not disclose that the facts charged in the complaint amounted to a violation of the ordinance. There is no reference in the complaint to the particular amendment relied upon, nor even to the date of its passage.

It is only under the amended ordinance that a conviction could be had.

The complaint sets forth that section 1 of the ordinance was violated, not section 1 as amended which is the section under which they were convicted. Merely to refer to an ordinance as amended without specifying when the amendment was passed gives no sufficient information to a defendant to permit him to prepare a proper defense.

### III

#### **THE OFFENCE CHARGED UNDER THIS ORDINANCE IS A CRIME AND THEREFORE THE BOARD OF ALDERMEN HAS NO AUTHORITY TO PASS AN ORDINANCE OF THIS KIND.**

In the case of *State s. Green*, 96 N. J. L. page 434, it was held that a keeper of a gambling house cannot be convicted under a borough ordinance. The following is the syllabus:

- “1. A person cannot be charged and convicted of the crime of keeping a disorderly house, except on the presentment or indictment of a grand jury, as the crime is one indictable at common law and in such cases every person is protected from prosecution except in the manner aforesaid by article 1, Section 9 of the constitution of this state.
2. A conviction under a borough ordinance of the keeping of a disorderly house is invalid as an invasion of the constitutional rights guaranteed to every person under article 1, Section 9 of the state constitution.”

Those who frequent a place of this kind for the purpose of engaging in the disorder there carried

on are guilty of aiding and abetting the proprietor and so are guilty of a like crime. This statement is based upon the authority of as old an author as Blackstone. The statement will be found in 4 Blackstone, page 64, that frequently a disorderly house is a crime at common law. Under these circumstances, the case of State vs. Green applies to those who were present in a gaming house as well as the proprietor.

We submit therefore that there is no authority in the Board of Aldermen to pass an ordinance of this kind.

#### IV.

#### **THIS ORDINANCE IS UNREASONABLE AND CONTRARY TO THE RULES OF COMMON LAW.**

It provides that a person present at a gaming house is guilty of an offence no matter how innocent he may be unless he proves to the court that he was there innocently. (Case, page 39.) In the Rafferty case, 133 At. Rep. 524, above referred to, where the same ordinance was before the court, the following appears at the end of the opinion:

“We believe that we have thus dealt with every question raised and argued by the prosecutor and we desire to be understood as limiting our consideration and determination to such questions.”

This leads us to believe that the court had this provision of the ordinance in mind when it made the concluding remarks stated above. To com-

pel a defendant to prove his innocence is contrary to the fundamentals of our jurisprudence, and to the universal rule throughout the states. The authorities are clear:

In *State vs. Fox*, 70 New Jersey Law, page 354, it was said that mere presence at the scene of a crime does not render the person particeps criminis. The effect of this ordinance is to shift from the State to the defendant the burden of proof.

In the case of *People vs. Cannon*, 139 New York, at page 32, it was said:

“The people must sustain the burden of proof of guilt at all times.”

In *People vs. Lyons*, 27 Hun. page 180, cited in *People vs. Clipperly*, 101 New York, page 634, it was held that a statute which provided that if a person in a bar room was seen to drink liquor, that it was to be presumed that it was sold to him therein, for the purpose of being drunk on the premises. This was declared unconstitutional on the ground that it deprived him of the right by a trial by a jury, it being held that a jury had a right to say whether such evidence was sufficient or not, and that the statute could not put upon the defendant the burden of proving that he was not guilty because somebody drank liquor upon his premises.

In *McFarlane vs. American Sugar Refining Company*, 241 United States, page 79, the United States Supreme Court says:

“It is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime.”

In *Courtney vs. People*, 94 New York, page 490, it was said:

“A law reversing the presumption of innocence would violate fundamental principles, binding alike upon the legislature and the courts.”

This attempt to shift the burden of proof strikes at a basic principle of the common law. It is contrary to a most elementary rudiment of our entire system, and unknown wherever the common law prevails. The ordinance before us attempts this radical step. It is, in our opinion, illegal and convictions had under it should be set aside.

#### V.

#### **THE BOARD OF ALDERMEN HAD NO POWER TO PASS THE ORDINANCE UNDER WHICH THE CONVICTION WAS HAD.**

The Board of Aldermen has only such authority as is conferred on it by the Legislature.

We believe that as argued above, the legislature could not have constitutionally enacted a law similar to this ordinance, but even if it could, it does not follow that the Board of Aldermen has such power. In no statute is such power given expressly. And we think that it will not be implied from any grant of power in general terms. The ordinance in question was passed before the enactment

of the Home Rule Act in 1917. It is dated May 15, 1916 (case page 40) and was undoubtedly supposed to be authorized by Section 26 paragraph III of the Paterson Charter (P. L. 1871 p. 808) which gave the Board of Aldermen power to make ordinances:

“To restrain and suppress disorderly and gaming houses, and houses of ill-fame, and all instruments and devices used for gaming, and to prohibit all gaming and fraudulent devices.”

It is not to be implied from this statute that it was the intention of the Legislature, even if it could do so, to confer on the Paterson Board of Aldermen power to so change the rule of common law so as to cast upon a defendant the burden of proving himself innocent of a charge. Power to make such provision should only be found when expressly given, if it could be given at all.

## VI.

### **THE RECORD OF THE CONVICTION SHOWS THE EVIDENCE OFFERED WAS NOT SUFFICIENT TO CONVICT DEFENDANTS.**

If we examine the certificate of conviction on page 6, line 26, we find the following:

“On the day in question, April 19th, 1926, all the defendants were present in the room or place operated by John Caracaras at No. 40 Van Houten Street, Paterson, New Jersey, wherein betting, chances and gaming, conditioned upon the happen-

ing of events are carried on and allowed, and wherein gaming for money is allowed or carried on, to wit, gaming and gambling for money with playing cards; and it further appearing that on the day in question the defendants were playing a game known as "Acey-dewey" with dice and cards, the cards being used for counters; that certain money was found on one of the tables and that John Caracaras had been warned several times to give up the practice of running this establishment, but that he persisted in doing so; that there were curtains on the windows and upon the officers entering the premises all of the defendants, gambling as indicated, made a great effort to escape; it also appeared that at some tables the customers played for drinks and coffee; and it not appearing to the Court from the testimony that the defendants were innocently present without any interest in the gaming."

The first statement is that defendants were present in a room where gaming was carried on, etc.; there is no charge that gaming was carried on at the time defendants were present, and it does not appear that this statement was made by any person who had knowledge of the fact that gaming was actually permitted at any time. Nor is this a mere slip of the record. No one testified in the police court that he had actually ever seen any gambling in the place in question.

The next paragraph then says that defendants were playing with dice and cards at tables, but does not charge the defendants were playing for money. Money was found on one table, but if the Recorder had made a full report of the evidence, he would have said that this money amounted to fifteen cents and was the price of three cups of coffee which the men at that table were consuming.

The record continues that there were curtains on the windows, not an offense nor unusual, and that on the appearance of the officers, the defendants made a great effort to escape. Now these men were all Greeks and ignorant, meeting together at a coffee house and enjoying themselves for the evening. Should it cause surprise that when the place was rushed by a squad of police that these men should be frightened and try to escape? The record continues that at some tables the men played for drinks and coffee. How or when this appeared the record does not say. And then that it did not appear from the testimony that the defendants were innocently present. This seems to be the reason of the conviction because the defendants did not prove their innocence.

In conclusion, we submit that the convictions of the prosecutors are improper because the record does not set up the number of the section and the title of the ordinance violated; because the offense charged is a crime and punishable only on a presentment or indictment of a grand jury; because in shifting the burden of proof, the ordinance is contrary to the principles of the common law, and

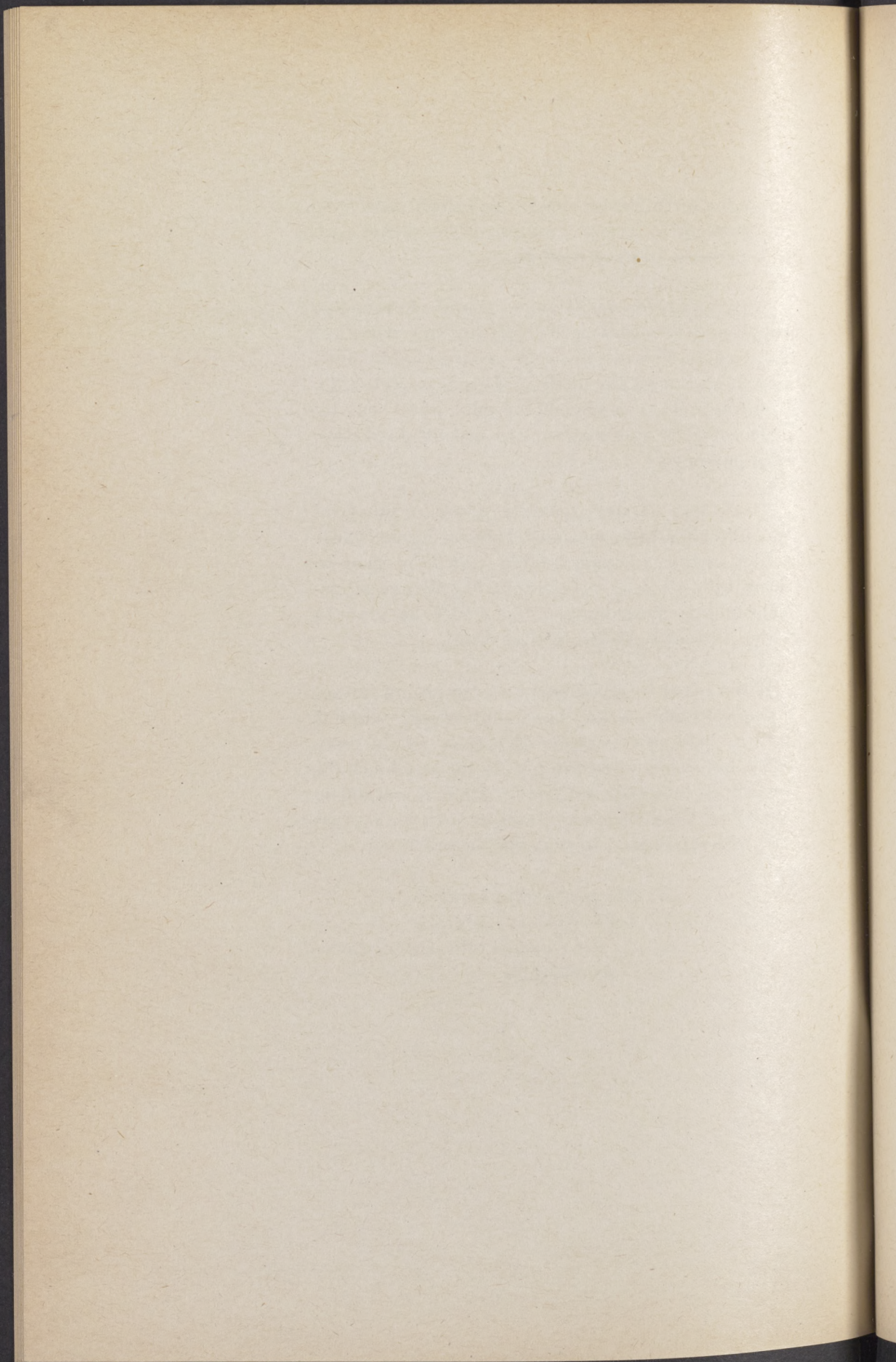
because the legislature could not grant power to the Board of Aldermen to so provide and that even if it could, it has not done so.

The men convicted were found in a coffee house, and it is quite possible that they were not given as much consideration as if they had been men in higher walks of life. This is unfortunate, as inconsiderate treatment of men like these by police officers and magistrates breeds discontent with our law.

There was no stenographic report of this trial and unfortunately, we must rely on its technical aspect in this argument. We would be glad to furnish the story of defendants, but that is impossible in this proceeding. We would be glad to waive all technicalities in that event.

If the place in question was a gambling house, it could readily have been suppressed without such a raid as occurred. Evidence could have been obtained against the proprietor and he could have been indicted and tried. Such a method is far better than rushing in and arresting all present, without regard to why they were there.

Respectfully submitted,  
FRANK J. DAVIES,  
Of Counsel with Prosecutors-  
Appellants.



## New Jersey Court of Errors and Appeals

Richard Minochian, et als., Prosecutors-Appellants,	}	On Certiorari
vs.		
State of New Jersey and City of Paterson,		
Defendants.		

### Brief for Defendants

The prosecutor-appellants were convicted by the Recorder of the City of Paterson of being present in a place where gaming is carried on (Case, page 7, line 16) in violation of an ordinance entitled, "An Ordinance to Prohibit Gaming and the Keeping of Gaming Houses in the City of Paterson, and to Provide for the Punishment thereof," passed May 15, 1916, and approved the next day. Section 1 thereof provides as follows:

"That no person or persons shall keep or maintain or be present in any house, room or apartment within this City, wherein betting, pool selling or chances or gaming of any kind upon the event of any horse race or races between horses or upon the happening of any event is carried on or allowed, nor shall any person or persons keep any house, room or apartment, or be present therein, wherein gaming for money or valuables is allowed or carried on in this city; provided, that where a person is innocently present, without any interest in the gaming, and this is proved to the satisfaction of the Recorder, he shall be acquitted." (Case, page 39.)

The conviction was reviewed by the Judge of the Court of Common Pleas of Passaic County under P. L. 1908, page 442. It was so stated in the Brief of the appellants filed in the Supreme Court, when this case was before it. It now transpires, that since the Supreme Court decided this case adversely to the appellants, that they suddenly decided that the review of the Common Pleas was had under a different statute. This situation was considered by the Supreme Court upon application for a re-hearing, which was denied. (Case, page 57.)

*POINT I.*

***THE COURT OF COMMON PLEAS DID NOT HAVE THE POWER AND AUTHORITY TO REVIEW THE DECISION OF THE POLICE JUSTICE IN THE COURT BELOW.***

The review sought by the appellants was had under P. L. 1908 page 442, which admittedly restricted the court's power to cases involving persons in custody.

This was so stated by the appellants in their brief and was never in dispute until the Supreme Court decided the instant case against the appellants.

We contend that the appellants cannot now rely upon a new statute to secure a reversal.

Assuming however that the Supreme Court arrived at its decision based upon an imperfect reason, the appellants cannot avail themselves thereof in this Court.

It has repeatedly been held by the Courts of

our state that *“when on appeal it is found that the court below reached a right result even if upon a wrong reason, the judgment should not be disturbed. Errors may be assigned upon matters in the record only, and not upon the reasoning which induced the rendering of the judgment under review.”*

*See* McCarthy v. West Hoboken, 93 N. J. L., 247.

State, Ruckman v. Demarest, 32 N. J. L., 528.

## POINT II.

### **THE COMPLAINT SUFFICIENTLY APPRISED THE DEFENDANTS OF THE OFFENSE OF WHICH THEY WERE CONVICTED.**

We quote from the complaint (Case, page 3, lines 25-31): “did violate a provision of the ordinance of the Mayor and Aldermen of the City of Paterson entitled ‘An Ordinance to prohibit Gaming and the Keeping of Gaming Houses in the City of Paterson, and to Provide for the Punishment thereof,’ passed August 19th, 1899, and approved the same day and the amendments thereof.”

We continue to quote from the complaint (Case, page 3, line 32) “in that the said defendants were present in the room that John Caracaras of the City of Paterson, did keep or maintain at, to wit 40 Van Houten Street, Paterson, N. J., a room within said City, wherein betting, chances or gaming upon the happening of an event, to wit, dice and card gaming, was carried on or allowed for money or valuables in violation of Section 1 of the said ordinance as above set forth.”

The duty of the police court magistrate in cases of this character are founded upon Chapter 77, P. L. 1910.

Section 4 of said statute reads as follows:

“Any person violating any ordinance or regulation of any municipality may be arrested by any police officer . . . and taken before such court, where the case shall be summarily heard and disposed of by the magistrate of any such court, without the filing of any pleadings. And on proceedings for the purpose of recovering a penalty for the violation of any ordinance or regulation of any such municipality such ordinance shall be proved in the manner now required by law, and if the defendant shall be found guilty, the magistrate of such court may impose upon the persons so convicted a fine not exceeding the penalty provided by said ordinance . . .”

These defendants were convicted of violating the same ordinance and the same section thereof reviewed in *Rafferty vs. Court of Common Pleas, Passaic County*, 102 N. J. L., 489. The judgment below was affirmed.

The formalities of the statute having been complied with and a proper conviction in accordance with said statute having been entered, the judgment below should not be disturbed.

**POINT III.**

**THE ORDINANCE IS VALID AND CONSTITUTES A POLICE REGULATION OF THE CITY OF PATERSON, AND DOES NOT CHARGE THE DEFENDANTS WITH THE COMMISSION OF A CRIME.**

In *Riley vs. Trenton*, (51 N. J. L., page 498), it was held that certain acts which are indictable as offenses against the state may also be, by the legislature, constituted offenses against the police regulations of municipalities.

We quote from the syllabus:

"1. Certain acts which are indictable as offenses against the state may also be, by the legislature, constituted offenses against the police regulations of municipalities, so as to subject the offender to the mode of trial incident to proceedings for the violation of ordinances; if, in such cases, the legislature has not made special provision for a trial by jury, it cannot be demanded as matter of right."

This case has been followed consistently by our courts, and the courts of other jurisdictions.

**POINT IV.**

**THE ORDINANCE IS REASONABLE.**

The exercise of the police power for the protection of public morals proceeded upon a number of grounds; that vice is intrinsic evil and has no right to existence or toleration. Gambling

is one of the offenses with which every large municipality is compelled to deal.

We contend that the authority to adopt the gaming ordinance has been vested in the City government of Paterson by the legislature, and such being the case the ordinance itself may make it an offense to be present in a gaming house on even one occasion. Assuming that the subject matter was one concerning which the City of Paterson could legislate, it could, in the exercise of said legislative power, make it an offense to be present in a gaming house.

We submit that the prosecutors are in error in contending that Section 1 of the ordinance under review places the burden of proof upon the defendants contrary to law. The ordinance makes it an offense:

“to be present in any house, room or apartment within this city, wherein betting, pool selling or chances or gaming or races between horses or upon the happening of any event is carried on or allowed, nor shall any person or persons keep any house, room or apartment, or be present therein, wherein gaming for money or valuables is allowed or carried on in this City.” (Case, page 39.)

Experience has taught that occasionally an innocent person may be found in a gaming house, and under the circumstances to relieve the ordinance of its original harshness it was amended to provide:

“that where a person is innocently

present, without any interest in the gaming, and this is proved to the satisfaction of the recorder, he shall be acquitted." (Case, page 39.)

This provision of the ordinance does not necessarily relieve or shift the burden of proof whatever, it has merely accorded defendants, in cases such as is now under review, an opportunity of presenting evidence which would indicate that they were innocently present, which they were unable to do previous to the adoption of the amendment to the ordinance in question.

*POINT V.*

***THE BOARD OF ALDERMEN HAVE POWER TO PASS THE ORDINANCE UNDER WHICH THE CONVICTION WAS HAD.***

The ordinance in question is authorized by Section 26, Paragraph 3 of the Paterson Charter (P. L. 1871, page 808) which empowers the Board of Aldermen to restrain and suppress disorderly and gaming houses, and houses of ill-fame, and all instruments, and the devices used for gaming, and to prohibit all gaming and fraudulent devices.

*POINT VI.****THE RECORD OF CONVICTIONS SHOWS THAT SUFFICIENT EVIDENCE WAS OFFERED TO CONVICT THE DEFENDANTS.***

The Record of Conviction indicates that one of the defendants, John Caracaras, did keep or maintain at No. 40 Van Houten Street, Paterson, New Jersey, an enterprise where betting, chances or gaming upon the happening of an event was carried on for money and valuables. It also appears that on the date of the arrest, namely: April 9, 1926, all the defendants were present in the room or place operated by John Caracaras at No. 40 Van Houten Street, Paterson, New Jersey, and were engaged in playing a game of "Acedewey" with dice and cards; that money was found on one of the tables and that John Caracaras, the proprietor, had been warned several times to give up the establishment; that when the police officers entered the premises the defendants made a great effort to escape. It also appears that at some tables the customers played for drinks and coffee. (Case, page 6 and 7.)

This court in *Brown vs. State*, (49 N. J. L., page 61) has held that playing cards for beer to be purchased and paid for by the loser is gaming.

*CONCLUSION*

We submit that the only questions to be considered are those relative to the jurisdiction of the Court, which pronounced judgment, and the legality of the proceedings; that is, errors of law apparent on the face of the record and which are jurisdictional in their nature.

The conviction under review complies with the statute (Chapter 77, P. L. 1910, page 112) and in further support of this contention we cite "Rafferty vs. Common Pleas," 102 N. J. L., 489.

We respectfully submit, therefore, that the convictions of the prosecutors are proper; that the ordinance in question is reasonable, is a valid exercise of the power conferred by the legislature, and that the record in all respects complies with the provisions of our law. We feel that an uncalled for attempt has been made to arouse undeserved sympathy for the appellants. We have pointed out that the defendants had been warned repeatedly by the police to desist from their activities, which would indicate that no undue advantage was taken of them. Moreover, at every step in the proceedings they have had the aid of able counsel.

This is a clear case involving a gambling house which has operated in the City of Paterson and which we feel this Court will not in any way encourage. The judgment under review should be sustained.

Respectfully submitted,  
CHARLES H. ROEMER,  
Attorney and of Counsel  
with Defendants.

