INDEX

TESTIMONY

(Filed February 19, 1926)

WRIT OF CERTIORARI

New Jersey; ss.

(L. S.)

The State of New Jersey to Edgar M. Tilt, John A. Fitzmaurice, William E. Eaton, George E. Christie, constituting the Board of Police Commissioners of the City of Paterson, in the County of Passaic, John M. Tracey, Chief of Police of the City of Paterson, and Meyer Jaffe, Clerk and Secretary of the said Board of Police Commissioners, Greeting: 10

We being willing for certain reasons appearing by the affidavit of Anthony V. Kohn, to be certified of certain proceedings had and taken before the said Edgar M. Tilt, John A. Fitzmaurice, William E. Eaton, and George E. Christie, the Board of Police Commissioners of the City of Paterson, in the County of Passaic, on the twenty-fifth day of January, 1926, upon which complaint the said Anthony Kohn was tried for alleged violations of certain rules and regulations governing the said police force, and set forth in said complaint on the eighth day of January, 1926, on which he was found guilty and dismissed from the said police force; and of the record and judgment touching said proceedings, as fully as they remain before the said police commissioners, or in the possession and under the control of the said Meyer Jaffe, Secretary of said Board of Police Commissioners. 20 30

We command you, and each of you, that said proceedings, with the judgment entered thereon against the said Anthony V. Kohn, and all matters touching and concerning the said proceedings and judgment to our Supreme Court of Judicature at Trenton, on the 20th day of February, next,

you certify and send, together with this writ, that therein may be done what of right and according to the laws of the State of New Jersey ought to be done.

Witness, William S. Gummere, Esq., Chief Justice of our Supreme Court at Trenton, this 1st day of February, 1926.

10 (Signed) Edward J. Kelleher,
Clerk.

(Signed) Weinberger & Weinberger
Attorneys of Prosecutor.

(This same writ filed in the case of McCormack.)

(Filed February 19, 1926)

RETURN TO WRIT

Extracts from minutes of the Board of Fire and
20 Police Commissioners, in re Anthony Kohn,
Patrolman in the Paterson Police
Department

January 12th, 1926

At this time charges against Patrolmen Anthony Kohn, James McCormack and Frank Perry was taken up.

Patrolmen Kohn, McCormack and Perry were called before the Board and the Clerk read the following charges against them.

30 To the Board of Fire & Police Commissioners
of the City of Paterson.

I, John M. Tracey, Chief of Police of the City of Paterson do hereby charge that Anthony Kohn, James McCormack and Frank Perry, members of the Police Department of the City of Paterson did violate on the 6th day of January, 1926, an ordinance entitled "An ordinance to establish, regulate and control a day and night police; to regu-

late and define the manner of their appointment and removal, their duties and compensation," passed December 29, 1921, and approved December 31, 1921, in that:

1. They did violate paragraph two of section fourteen of said ordinance, in that they failed to protect properly certain hops, sugar, pumps, burners and other contents of the building at No. 17 Ann St., and allowed same to be removed from said building, in willful disobedience of orders.

I, John M. Tracey, Chief of Police of the City of Paterson, do hereby further charge that Anthony Kohn, James McCormack and Frank Perry, members of the Police Department of the City of Paterson, did violate on the 6th day of January, 1926, the aforesaid ordinance, in that:

2. They did violate paragraph 14 of section 14 in that they were guilty of conduct subversive of good order and the discipline of the force, in that they did allow certain hops, sugar, pumps, burners and other contents of the building at No. 17 Ann Street to be removed from said building, in willful disobedience of orders.

Signed, John M. Tracey, Chief of Police.

President Tilt asked Patrolmen Anthony Kohn, James McCormack and Frank Perry as to how they plead to the charges and they replied "Not Guilty." On motion by Commissioner Christie which was duly seconded by Commissioner Eaton and carried, all the Commissioners voting in the affirmative, the trials of Patrolmen Kohn, McCormack and Perry were set for Tuesday, January 19th, 1926, at eight o'clock, p.m. in the Council Chambers in the City Hall.

Commissioner Fitzmaurice asked Chief Tracey if he could sustain the charges brought against Officers Kohn and McCormack and he replied, I can sustain them against some one. Commissioner Fitzmaurice further said that he read in the newspapers that other police officers visited the brewery and he wanted to know why these other officers were not suspended.

President Tilt said at this time, that when the trials are held it may develop that other men may be involved and if so, charges should be made and at such a time he will insist if it is necessary, that charges shall be made and will be made. President Tilt further said; it isn't fair to suspect other men in the department until the trials are held and these trials should proceed in an orderly way.

Commissioner Fitzmaurice further asked; if the Chief has the right at this time to change his mind and withdraw the charges against these men, so as to save them the cost of engaging counsel.

President Tilt replied: that the Chief has that right and if he feels that he cannot obtain convictions on the evidence in his possession, he has the right to nolle prosse the case, he can do it and he ought to do it.

January 19, 1926 (Special Meeting)

The special meeting of the Board of Fire and Police Commissioners was held Tuesday, January 19th, 1926, at eight o'clock, p.m., in the Council Chambers in the City Hall to conduct the trials of Officers Anthony Kohn, James McCormack and Frank Perry on the following charges preferred against them: (1) They did violate paragraph two

of section fourteen of the ordinance as set up in the charges, in that they failed to protect properly certain hops, sugar, pumps, burners and other contents of the building at No. 17 Ann Street, and allowed same to be removed from said building, in willful disobedience of orders; (2) They did violate paragraph fourteen of section fourteen of the ordinance as set up in the charges, in that they were guilty of conduct subversive of good order and the discipline of the force, in that they did allow certain hops, sugar, pumps, burner and other contents of the building at No. 17 Ann Street to be removed from said building, in willful disobedience of orders.

President Tilt in the chair; Commissioners Christie, Eaton, and Fitzmaurice answered roll call.

Officer Perry was represented by Counsellor William R. Rogers, Officers Kohn and McCormack by Counsellors Harry H. and Joseph J. Weinbeger and the City of Paterson by City Attorney Benj. J. Spitz.

Counsellor Rogers requested that all three officers be tried together as the charges brought against them were similar and occurred when all three officers were on duty.

Counsellor Weinberger objected and requested that individual trials be held as each member of the department were charged separately.

City Attorney Spitz stated that he had no objections to trying the officers either together or separately.

President Tilt after conferring with the other members of the Board said; that the Officers be

tried separately and that Officer Perry be tried first and Officers Kohn and McCormack afterwards.

At this time the trials of Officers Kohn and McCormack began. Counsellors Harry H. and Joseph J. Weinberger represented Officers Kohn and McCormack and City Attorney Benj. J. Spitz represented the City of Paterson.

Sidney Turner was sworn as the stenographer to take the testimony in this case.

The following having been duly sworn gave testimony in behalf of the City; Captain Peter Murner, Sergeant William Lord, Detective Charles Eyres, Detective Walter Bland, James Laurie. At this time John Van Noort was called, he being not present and the city needing his testimony in this trial; President Tilt in behalf of the Board adjourned the hearing until Monday evening, January 25th, 1926, at eight o'clock, p.m.

January 25, 1926 (Adjourned Hearing)

The adjourned hearing of the trials of Officers Kohn and McCormack was held Monday evening, January 25th, 1926, at eight o'clock, p.m. in the Council Chambers in the City Hall.

President Tilt in the chair; Commissioners Christie, Eaton and Fitzmaurice answered roll call.

The trials of Officers Kohn and McCormack were continued.

Counsellors Harry H. and Joseph J. Weinberger represented Officers Kohn and McCormack and City Attorney Benj. J. Spitz represented the City of Paterson.

The last witness sworn in behalf of the city was John Van Noort.

The following being duly sworn testified in behalf of Officers Kohn and McCormack. Officers David Arnold, Theodore Cabot, Joseph Rafferty, Robert Alexander and Archie Vogel. The taking of the testimony concluded. Counsellor Harry H. Weinberger and City Attorney Benj. J. Spitz briefly summed up after which on motion by Commissioner Christie which was duly seconded by Commissioner Fitzmaurice and carried, all the Commissioners voting in the affirmative, the Board went into executive session, upon returning from this session and under the direction of the President the following Commissioners appeared and answered roll call; Commissioners Christie, Eaton, Fitzmaurice and President Tilt.

Officers Kohn and McCormack were summoned before the Board and the President thereupon said; Officers Kohn and McCormack you have been charged here before this Board with conduct unbecoming an officer, and the Board has considered the case and the testimony that has been offered, and have come to the conclusion that your conduct at the time charged was not that of an officer. You were sent there by the authority to guard this property. Now, it did not make any difference and should not have made any difference to you or each of you or to any other officer what you might think about the prohibition law or its enforcement; that is not your concern or my concern or this Board's concern. The facts are, that you were sent down there by a superior officer to guard certain property and to see to it that

that property did not get away from you. The facts show that you did not perform your duty, much to the regret of this Board, and this Board has come to the conclusion that they can do no other under the circumstances and proof but to find you guilty,—and you Officer Kohn and you Officer McCormack, are each found guilty, and the
10 sentence is that each of you be dismissed from the force, expelled as of January 7th.

Meyer Jaffe,
Clerk.

Minutes of the Proceedings of the Executive Session of the Board of Police and Fire Commission During the Trial of Officer Perry, and Officers Kohn and McCormack on January 25, 1926

20 Present: Commissioner Fitzmaurice, Commissioner Eaton, Commissioner Christie, Commissioner Tilt.

President Tilt acted as Secretary of the executive session.

The testimony in the case was discussed by all of the members and President Tilt suggested that a vote be taken to determine if any of the officers were guilty. A vote was taken and the vote was four in the affirmative that Officer Perry was not
30 guilty and that Officers Kohn and McCormack were guilty of violating paragraph two, section fourteen of the ordinance set up in the charges, in that they failed to protect properly certain articles and contents of the building at 17 Ann Street and allowed same to be removed from said building in willful disobedience of orders, as alleged in the charges, and they further violated

paragraph 14, section 14 of the ordinance set up in the charges in that they were guilty of conduct subversive of good order and discipline of the force for allowing certain articles and contents of said building to be removed from said building in willful disobedience of orders, as alleged in the charges.

President Tilt then suggested a discussion as to the sentence to be imposed. After a lengthy discussion a motion was made to expell Officers Kohn and McCormack from the police force of the City of Paterson. 10

A vote was taken thereon as follows:

Commissioner Fitzmaurice—Nay
Commissioner Eaton—Yea
Commissioner Christie—Yea
Commissioner Tilt—Yea.

President Tilt then announced the vote as being three to one for dismissal, that that would be the verdict and decision of the Board. The Board then decided to leave the executive session and to announce its decision, which was done. 20

Edgar M. Tilt,
Secretary at the executive session.

February 9, 1926.

President Tilt in the chair; Commissioners Christie and Eaton answered roll call. 30

The minutes of the meeting an January 19th, 25th and 26th, 1926, were approved on motion by Commissioner Eaton, seconded by Commissioner Christie and carried, the three Commissioners present voting in the affirmative.

Meyer Jaffe,
Clerk.

(The same return filed in the case of McCormack.)

In the Matter of the Trial of Anthony Kohn and James McCormack, Members of the Police Department of the City of Paterson, on charges preferred against them by John J. Tracey, Chief of Police of the City of Paterson, before the Board of Police and Fire Commissioners of the City of Paterson.

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TRANSCRIPT OF TESTIMONY

Transcript of testimony of witnesses in the above entitled matter, taken on January 19th and 25th, before the Board of Police and Fire Commissioners of the City of Paterson, at the Council Chamber in the City Hall, Paterson, New Jersey.

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Appearances.

Benjamin Spitz, Esq., For the Board of Police and Fire Commissioners.

Messrs. Weinberger & Weinberger, by Harry Weinberger, Esq., and Joseph Weinberger, Esq., for the Defendants Kohn and McCormack.

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(Mr. Harry Weinberger conducting the examination of witnesses.)

(Sidney J. Turner, sworn as stenographer to take the proceedings.)

In the matter of the hearing of complaints against Police Officers Kuhn and McCormack, before the Board of Police and Fire Commissioners of the City of Paterson.

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Transcript of testimony taken before the Board of Police and Fire Commissioners, on Tuesday, January 19th, 1926, at 8 P.M. at the City Hall, Paterson, New Jersey.

Present: Commissioners: Tilt, Christie, Eaton, Fitzmaurice.

Appearances

Benjamin Spitz, Esq., for the City of Paterson.

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Messrs. Weinberger & Weinberger, for Defendants.

CASE CALLED

Mr. Harry Weinberger:

For the purposes of the record, Mr. Commissioners, I would respectfully move for a dismissal of the complaints against officers Kuhn and McCormack, on the ground first: On the ground that the complaint is indefinite, vague and uncertain, and does not specifically set forth any violation of an Ordinance such as is alleged or is referred to in the complaint;

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Second; that the mere allegation in the complaint that the defendants did violate paragraph 14 of Section 14, in that he was guilty of conduct subversive of good order and the discipline of the

force, in that he did allow certain hops, sugar, pumps, burners and other contents of the building at No. 17 Ann Street to be removed from said building, in willful disobedience of orders, is not an allegation which supports anything in the ordinance which constitutes an offense that a police officer might be guilty of, and that paragraph 14 of Section 14 of the Ordinance does not in fact support as a matter of law any of the actual allegations in this particular complaint; and on the further ground, that none of the allegations in the complaint support any alleged violations of any specific section of the Ordinance which is referred to in the complaint, and that therefore, as a matter of law, none of the allegations are sufficient to warrant or justify these defendants being put upon trial .

Commissioner Tilt—Motion denied.

Mr. Weinberger—The same against both defendants?

Commissioner Tilt—Yes.

Exception granted.

CAPTAIN PETER MURNER, a witness produced on behalf of the City, being duly sworn according to law, upon his oath, testified as follows:

Direct Examination by Mr. Spitz:

Q. Captain Murner, did you assign any officers to take charge of the Brewery that had been raided at 17 Ann Street? A. Yes.

Q. Who did you assign,—what officers? A. Officers Kuhn and McCormack.

Q. At what time? A. About 12.50.

Q. And with what instructions, if any? A. To see that nobody went in there and to see that nothing was disturbed.

Q. And, did you later send somebody to relieve officers Kuhn and McCormack? A. I did.

Q. Who? A. Officer Perry.

Q. At what time? A. At 2.55. 10

Q. Did you give him any specific instructions at the time? A. Yes, I did.

Q. What? A. To see that nothing was disturbed in that Brewery.

Cross Examination by Mr. Weinberger:

Q. Were either of these officers clothed with a warrant of authority to hold that stuff there as against the owner? A. Not that I know of. 20

By Commissioner Tilt:

Q. Officer, what do you mean to understand by "clothed with authority"? A. Well, he asked me a question "were they clothed with a warrant". I don't know if they had a warrant or anything. I didn't give them any.

Q. You sent them down to guard this Brewery? A. Yes. 30

Q. As Captain of the department, you assigned these officers there to guard the place? A. Yes.

Q. Officer, my question was: did you give them any warrant under which they had a right to detain anything there, if the owner called for it? A. No, sir; I did not.

WILLIAM H. LORD (Detective), being duly sworn according to law, upon his oath, on behalf of the City, testified as follows:

Direct Examination by Mr. Spitz:

Q. Were you in the Brewery at 17 Ann Street
10 while officers Kuhn and McCormack were there? A. Yes, sir.

Q. At what time? A. Around 1.30.

Q. And was anyone else there? A. There were several around there at the time.

Q. Were you inside of the Brewery? A. Yes.

Q. Who else was there? A. Officer Albert was was there. I couldn't just recall all who were there. I went down to get the samples of the beer to take up to the Hospital to Doctor Sandt.

20 Q. Do you know what time officers Kuhn and McCormack left the Brewery at 17 Ann Street? A. No.

Q. Do you know what time officer Perry left headquarters to go down there to relieve officers Kuhn and McCormack? A. No, I do not.

Q. When you went down there, you went down there with officers Ayres and Bland? A. Yes.

Q. What were your instructions to the officers? A. I told them to take an inventory of what stuff
30 there was there.

Q. Officers Ayres and Bland? A. Yes.

Cross Examination by Mr. Weinberger:

Q. Were you the first one there? A. Yes.

Q. And it was then that officers Kuhn and McCormack were detailed to take care of the place?

A. Later on they were. I was down there first around ten o'clock, or a little after ten.

CHARLES AYRES, being duly sworn according to law, upon his oath, on behalf of the City, testified as follows:

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Direct Examination by Mr. Spitz:

Q. Officer, were you with Sargeant Lord when they broke into the Brewery at 17 Ann Street? A. Yes; I broke the doors in.

Q. Did you take an inventory of what stuff there was in there upon orders from Sargeant Lord? A. Yes.

Q. Have you got a list of that inventory there? A. Yes.

Q. Will you read it, please? 20

(Inventory is admitted in evidence and marked Exhibit X-1 on behalf of the City.)

Q. What time was that inventory made by you? A. Around eleven o'clock, or 11.15.

Q. On January 6th? A. Yes.

Q. Who was with you when you made that inventory? A. Detective Bland.

Q. What time did you leave the place? A. 30 12.55.

Q. Were you relieved by anybody? A. Yes.

Q. Who? A. Officers Kuhn and McCormack.

Q. What time was that? A. Five minutes to one.

Cross Examination by Mr. Weinberger:

Q. Were all these things in there at the time you made this inventory? A. Yes.

Q. And you saw them there personally, did you? A. Yes, sir.

Q. When did you leave the place? A. Five minutes to one.

10

Q. At that time were they all in the same position they were in when you made your inventory? A. Yes, sir.

DETECTIVE WALTER BLAND, being duly sworn according to law, upon his oath, on behalf of the City, testified as follows:

20

Direct Examination by Mr. Spitz:

Q. Were you with Sargeants Lord and Ayres when they broke in the Brewery at 17 Ann Street? A. Yes.

Q. And did you take an inventory of the stuff in there upon orders of Sargeant Lord? A. Yes, sir.

Q. With whom? A. Detective Ayres.

Q. And is the inventory offered in evidence and marked "X-1" the inventory taken by you and Detective Ayres? A. Yes, sir; it is, this is it.

30

Q. And how long did you stay there with Detective Ayres? A. From the time that the Brewery was raided up to 12.55.

Q. Were you relieved by anybody at that time? A. Yes.

Q. Who? A. Two police officers.

Q. Who were they? A. Officers McCormack and Kuhn.

Q. And when you left the Brewery, they were then in charge of all the articles mentioned in the inventory? A. Yes.

Cross Examination by Mr. Weinberger: 10

Q. What time did you leave? A. Five minutes to one.

Q. You were with officer Ayres? A. Yes.

WILLIAM H. LORD, re-called:

Further Examination by Mr. Spitz:

Q. You went back to this brewery at 17 Ann Street later in the day? A. Yes, about four o'clock. 20

Q. With whom? A. With the Government men.

Q. How many? A. Three.

Q. And what did you find when you got there? A. I found that some of the things in the place had disappeared from there.

Q. Were you present when the inventory was taken? A. Yes, when Ayres and Bland took it. 30

Q. Did you check up on the inventory? A. No, I did not.

Q. Do you know of your own personal knowledge, do you, that some things were missing? A. Yes, I knew the hops and sugar were missing.

Q. That is, when you went back there at four o'clock, that was missing? A. Yes.

Q. Your attention was called to a burner that was missing? A. Yes, and the government men wanted to know where it was and I told them in front of the boiler, and

Mr. Weinberger—I object to any conversation between the government men and this witness, on the ground that it cannot be binding upon the defendants in their absence.

Mr. Spitz—I'll consent that it be stricken out.

Q. Well, did you investigate? A. Yes; I told them it was under the boiler, and

Mr. Weinberger—I object.

I went back to look, and I looked under the boiler and found it was gone.

Q. Did you later see that oil burner any place else? A. I saw part of it the next morning, the 7th, part of it at headquarters, and later on, we got the other part in Van Harken's wagon in the Fair Street garage.

Q. Who else was with you besides the government officers? A. Sargeant Keppler.

Cross Examination by Mr. Weinberger:

Q. You don't know whether the goods were removed after there o'clock, do you,—three o'clock in the afternoon? A. I don't know when.

Q. How about the beer, was that gone too? A The Prosecutor's men let that run out.

Q. Run out where? A. In the sewer.

JAMES LAURIE, a witness produced on behalf of the City, being duly sworn according to law, upon his oath, testified as follows:

Direct Examination by Mr. Spitz:

Q. Mr. Laurie, on January 6th, you helped load some material on a truck in the back of your yard? A. Sure; yes, sir. 10

Q. And what time was that? A. It was betwixt four and five o'clock.

Q. What time did you get home that day? A. About three o'clock.

Q. What did you do after that? A. I ate dinner.

Q. Then what? A. Left for the market for my wife.

Q. And what time did you get back home again? A. About a quarter after four. 20

Q. Did you see anything when you got back? A. Sure.

Q. What? A. I saw a piece of copper pipe and some things up against my porch.

Q. Then what happened? A. I went on in the house and I sat down, and about ten or maybe fifteen minutes after that a knock came to the door and a man was there and asked if I would give him a hand and I did, and so I got a bag of sugar and put that on the truck and then I came back and I got a pack of pails and put that on the truck. I know I made three trips. 30

Q. Your yard runs into the back of the garage at 17 Ann Street does it? A. Yes, sir. There is an alleyway between my place and the fence.

Q. You knew this place was raided? A. Sure.

Q. You can look into the window from your back yard around in the alley? A. I don't know; I wasn't back there.

Q. But you can look into the window of that garage where this Brewery was from your back yard? A. I don't know nothing about that.

Q. Do you know if there is a garage there? A. Sure.

Q. Do you know if there is a window in that garage leading from this alley way? A. That is so, so they say.

Q. You saw some people carrying materials out of that alleyway? A. Yes, bringing it and laying it by my stoop.

Q. Carrying it where from? A. I don't know where they was bringing it from.

Q. Where does that alley way go to? A. It goes back of the garage in back of another lady's back yard.

Q. That alley way runs right up against the back of the garage, does it? A. Yes.

Q. And the garage is the place where this Brewery was raided? A. Yes.

Cross Examination by Mr. Weinberger:

Q. You say you got home that afternoon about four o'clock? A. About three o'clock.

Q. And, you are sure it wasn't four o'clock, but you are positive now that it was after three? A. I don't know exactly what time it was, but I know I got home about three o'clock,—about a quarter after three.

Q. When you got home it was after three, — you are positive about that? A. Just about three.

Q. And at that time you saw nothing there? A. If there was, I didn't see anything.

Q. You didn't see anything there where you afterwards saw it when you came back home from up town? It was when you came back from uptown that you saw these things there? A. Yes. 10

Q. And you didn't see them there when you got home the first time? A. No, they wasn't there; if they was, I didn't see them.

Q. And that was sometime between three and four o'clock? A. Yes.

Q. You are sure of that? A. Yes, betwixt three and four o'clock.

Q. It was after you came back from being uptown that you helped load the wagon? A. Sure; yes. 20

Q. So that must have been some time between 3.30 and five o'clock that you helped load the wagon? A. It was betwixt 3.30 and 5.

Q. Betwixt 3.30 and 5 o'clock? A. Yes, sure.

Q. Sure of that? A. Yes, betwixt four and 5 anyhow, because I was sitting in the house quite a long while.

Q. It was between four and 5 that you saw these things there,—that you are sure about? A. Yes. 30

Q. You are absolutely sure of that? A. Well, I ain't sure about it; I had no time piece and so I don't know exactly; it was betwixt four and five.

Q. It took you about twenty minutes to get uptown and back, did it? A. I don't know exactly what time.

Q. Well, you're a slow mover? A. I did hurry.

Q. But you do move slowly? A. Well, I was taking my time,—window shopping.

Q. Well, it took you how long would you say? A. About half an hour.

Q. Now then, you got back at 3.30 from uptown,—that you are positive of? A. No, it was a quarter after four.

Q. Well, then it was 4.15 when you got back from uptown? A. No, I ain't sure.

Q. Well, you did some moving then that afternoon between four and five o'clock, is that safe? A. I did some moving.

Q. And you helped load a truck? A. Yes.

Q. And you don't know who the men were that asked you to help load? A. I didn't know.

Q. You were not working at the time? A. No.

Q. Wouldn't you remember the fellow that handed you $2.00 at a time when you were not working? A. No, sir; if I was to see him, I wouldn't know him.

Q. (Officer McCormack, get up a minute,) — Was it this man that you saw there at all? A. I don't know.

Q. Are you sure it wasn't him? A. No, I ain't sure about nothing.

Q. You said it was a stout man? A. It was three of them.

Q. I am talking about this one,—he is not the stout man you met there, is he? A. No; he ain't stout.

Q. So that you did not see him there? A. He could have been one,—I don't know him.

Q. Do you say this man ever spoke to you that day? A. No, I don't say.

Q. Do you say he gave you money that day? A. No, I don't say.

Q. Do you say you saw him that afternoon? A. I wouldn't say; I don't know him from Adam.

Q. That means you didn't see him? A. I don't know if I seen him or not. 10

Q. Was this the stout fellow that gave you the money (referring to Joseph Weinberger)? A. I don't know; I wouldn't know the fellow even if I seen him.

Q. Was this the man you met when the knock came to the door and asked you to give him a lift? A. I don't know.

Q. It might be him? A. It might be and might not be.

Q. How about that man (Officer Kuhn, stand up),—was it him? None of the men that gave you any money or that asked you to do any work on this truck were dressed in police officer's uniform? A. No, sir. 20

Q. You know a cop when you see him? A. Yes, sir; they wasn't dressed up in police uniform.

Q. This man was not there then,—he is a cop? A. I know it; I never seen him there.

Q. What did you put on this truck,—some sugar? A. One bag of sugar,—I didn't know what it was, he said it was sugar; and one length of 3/8 inch hose. 30

Q. Rubber hose? A. Yes.

Q. What else? A. And a pack of pails.

Q. See a burner go on there? A. No, I never seen no burner go on; no, sir.

Q. Do you know what a burner is? A. No.

Q. Then you don't know if he put it on or not? A. All I know is, I only put three things on.

Q. You don't know if anybody else helped put a burner on the truck? A. No, I don't.

(Photographs used in the trial of Officer Perry and admitted in evidence in this case.)

10

Q. You know where this window is in the back of the Brewery? A. No, I don't know exactly.

Q. Sure you never looked in through that window? A. I never had to go that far back.

Q. You can see without going back, can't you? A. No, there is a little house between.

Q. Did you see that window that day? A. No, I didn't see no window.

20

Q. Did you see any men carrying anything from the rear of that building where this Brewery was? A. I seen them coming out from in back of there.

Q. And you saw them coming out from in back of there at between four and five o'clock, after you came home from being uptown,—is that right? A. Right.

Q. Sure about that? A. Yes.

30

Q. And those men were coming from the rear of that building where this window is at? A. Out of the alleyway.

Q. And those things were put down near your house? A. Yes, by the stoop.

Q. And you helped put them on the truck? A. Yes.

Q. What time? A. Between four and five o'clock.

By Mr. Spitz:

Q. You didn't see any of the stuff coming out through the window? A. No.

Q. You don't know where it was coming from? A. From the alleyway, but I don't know from where. 10

Q. They may have been carrying it from some place on the ground to another place? A. Yes.

Q. You don't know what time it came out of the window? A. No, sir.

By Commissioner Tilt:

The Board has decided to secure the presence of Mr. Van Noort, and he will be called upon to appear before this Board at the adjourned date. Counsel makes the request that he needs the testimony of Mr. Van Noort in this case, and the Board will see to it that he gets his testimony in this case. 20

I want to know, Mr. Weinberger, on behalf of the Board, if you want to proceed out of the regular order and proceed with the trial and examination of your witnesses, or if you don't want to do that? 30

Mr. Weinberger—I don't see how we could, because unless they establish a case, and they certainly haven't so far, we couldn't very well take the defendants and put them on, in their defense, not knowing what the other side is going to testify to on direct examination.

Mr. Tilt—The Board will adjourn the hearing until Monday night, January 25th, at 8 P. M.

Hearing continued this 25th day of January, 1926, at Council Chamber, City Hall, Paterson, New Jersey, at 8 P. M.

10

Appearances

Benjamin Spitz, Esq., for the Board of Police and Fire Commissioners.

Messrs. Weinberger & Weinberger, by Harry Weinberger, Esq., and Joseph Weinberger, Esq., for the Defendants, Kuhn and McCormack.

JOHN VAN NOORT, a witness produced on be-
20 half of the City, being duly sworn according to law, upon his oath, testified as follows:

Direct Examination by Mr. Spitz:

Q. Mr. Van Noort, your ful name is what? A. John Van Noort.

Q. On January 6th, of this year, were you at No. 17 Ann Street, Paterson? A. Yes, sir.

Q. And, what time of day was that? A. About
30 twenty minutes of three.

Q. In the afternoon? A. Yes, sir.

Q. And were any officers there when you arrived? A. Yes.

Q. Who? A. Officers Kuhn and McCormack.

Q. Did you have a conversation with them? A. No,—only just said "Hello".

Q. What else did you do? A. That is about all.

Q. Did you ask them if you could go in the place there? A. No; I walked in; they let me in.

Q. They let you in? A. Yes.

Q. Well, when you walked in, what did you do inside? A. Just looked around.

Q. Did you touch anything in there? A. No. 10

Q. Didn't you have a drink in there? A. Yes.

Q. Then you must have touched something in there, didn't you?

Mr. Weinberger—I object to the witness being attacked by counsel who has produced him here as a witness. I don't understand that if the answer of the witness is unsatisfactory, he has a right to impeach him.

20

Commissioner Tilt—He is not impeaching the witness. We'll allow it.

A. Yes.

Q. What? A. A mug.

Q. And while you were in there, did you see anybody take anything out of there? A. I saw something going out of a back window there; yes.

Q. What was it? A. I don't know what it was.

30

Q. Have you learned since what it was?

Mr. Weinberger—Objected to as immaterial and irrelevant what he has learned since. I think the testimony should be con-

fined to what occurred at that time.

Question withdrawn.

Q. Do you know at this time what was taken out of the window?

Mr. Weinberger—Objected to. Obviously, it must be predicated on hearsay. Unless this witness has some knowledge of his own acquired at the time of the occurrence,—any evidence or knowledge acquired at any time subsequent, is immaterial and improper. My objection is, that unless it is first shown as to the source of information by virtue of which he acquired that knoledge, it cannot be proper.

Commissioner Tilt—The question is allowed.

Exception granted.

A. No.

Q. Who was it that you saw putting something out of that window? A. I don't know who it was.

Q. Can you describe him? Was it a man? A. Yes.

Q. Can you describe him? A. No.

Q. What time was it that you saw this man putting something out of the window? A. About five of three.

Q. Were officers Kuhn and McCormack in the place there then when you were in there? A. They were; they were in that "L".

Q. Did you speak to Chief Tracey about this? A. I did.

Q. What was your conversation with the Chief about it?

Mr. Weinberger—I object, unless it is shown to have been in the presence of these defendants.

Commissioner Tilt—We'll allow it.

Exception granted. 10

A. I told the Chief that the officers did not know anything about anything going out of that Brewery.

Q. Had Officer Perry arrived there at that time, at twenty minutes to three, when you saw this man lifting something out of the window?

Mr. Weinberger—Objected to, on the ground that the question is framed assumed that he saw something being lifted out of the window at twenty minutes to three, and there was no such testimony. I object to the form of the question; it assumes a fact that has not been testified to by the witness. 20

Commissioner Tilt—He said he saw something going out of the window.

Question withdrawn. 30

Q. At the time you saw something going out of the window, was officer Perry there? A. No, sir; he was not.

Q. At what time was it that you saw something going out of the window? A. About five of three.

Cross Examination by Mr. Weinberger:

Q. Mr. Van Noort, the premises which you were in,—by the way, what day was it that you were in there? A. I don't know what day it was.

Q. But, you were in there though? A. Yes.

Q. Did you go in with anybody? A. No.

10 Q. Went in there all alone? A. All alone.

Q. Sure about that? A. Sure about it; yes.

Q. Did you come to the place there with anybody? A. No.

Q. Are you sure about that, Mr. Van Noort? A. Yes; sure about it.

Q. Well, now let me see:—what prompted you to go there? A. I was across the street and I heard that the place was raided,—just curiosity, that's all.

20 Q. Just curiosity, was it? A. Yes, just curiosity; I was interested in nothing else but that.

Q. Not a thing? A. Nothing else but that,—curiosity?

A. Not a thing else, just curiosity;—to look the place over.

Q. It wasn't the beer over there that prompted you to go there and look it over? A. Just curiosity I said.

Q. Well, curiosity embraces a lot of things, 30 What part of curiosity was it that made you go in there? A. Just to see the Brewery.

Q. Just to see it,—that's all? A. That's all; just to see it.

Q. Was there any officer on the outside when you approached the premises? A. Not as I know of.

Q. Where were the officers that you did see there? A. Right by the door when I came in.

Q. Did you ask permission to go in there? A. No; they let me go in. I knew them very well; I knew both of them even before they were policemen.

Q. Were you with an officer at the time? A. No. 10

Q. Were you with a detective at the time? A. No.

Q. Mr. Van Noort, do you know detective Alber of the Police Department? A. I do.

Q. Was he with you at the time? A. No.

Q. Weren't you with him at the time? A. No.

Q. Was detective Alber there at the time? A. He was there when I left.

Q. Didn't detective Alber go in there with you? A. No. 20

Q. Sure about that? A. Sure.

Q. Was detective Alber in there while you were in there? A. No.

Q. Where was detective Alber when you saw him? A. He was outside when I left.

Q. Where did you see him? A. Outside of the building.

Q. Where on the outside—it is quite a street there? A. No, not much.

Q. Whereabouts on the outside did you see him with regard to these premises in question—where was it that you saw him? A. Right on the outside of the building there, in Ann Street. 30

Q. Was detective Lord there? A. No.

Q. Was detective Ayres there? A. No.

Q. Who else did you see there besides the two police officers that were on the inside of the

property, and detective Alber, who was on the outside? A. Nobody.

Q. Sure about that? A. Oh, I saw Dave Arnott there.

Q. Who is he? A. A policeman; I left the place with him.

Q. He was in there, was he? A. Yes, he came
10 in.

Q. Came in there while you were in there? A. Yes.

Q. And you say you left the premises at five minutes to three? A. Yes.

Q. Sure about that? A. No, I said that machine went out the window five minutes of three, and I left the premises three o'clock, when officer Perry came, and the patrol officers.

Q. Let's see; you got in there what time?
20 A. Twenty minutes to three.

Q. And you left there what time? A. Well, after three o'clock, say.

Q. You said before, that you left before three o'clock? A. I did not.

Q. Well, when was it that you left—was it after three o'clock? A. It was around three o'clock.

Q. What was it—was it around, after or before three? A. Maybe two minutes after three
30 Q. What made you take such particular note of the time? A. No reason at all in particular; only that those men were relieved, or I wouldn't know what time it was.

Q. Then, as a matter of fact, you don't know when you left, do you? A. No.

Q. So when you said a minute ago that you left

there at three, or around three, you were just guessing? A. It was around three o'clock.

Q. You have no idea when you saw anything going out of the place, have you? A. No.

Q. You don't know when anything went out, do you? A. No.

Q. And you don't know when you got there, do you? A. Yes, I do. 10

Q. How do you fix the time when you got there? A. I knew what time it was.

Q. But you were guessing about the time? A. Yes.

Q. You don't know exactly what time you were there? A. No.

Q. Do you know officer Kovach—did you see officer Kovach there? (Stand up, officer) Did you see him there? A. Yes; I think he was in there. 20

Q. Mr. Van Noort, had you been drinking before you saw him, or after you saw him there? A. After.

Q. Then you were sober when you saw him there? A. Yes.

Q. And, I assume, you were sober when you arrived? I may be wrong about that; if I am, correct me. A. I think I was.

Q. How about officer Alexander — see him there? A. I didn't see him. 30

Q. Officer Alexander here? (Officer Alexander stands up). See him? A. No, I don't know him.

Q. You don't remember seeing him? A. I do not.

Q. You won't say he was not there? A. I don't know. I didn't see him.

Q. There were so many there, you don't re-

member who they were, is that it? A. No, but I didn't see them.

Q. There were so many there, you can't just tell who they were, is that it? A. No.

Q. There were more than the two defendants there? A. No.

Q. Mr. Van Noort, you just said this officer (Kovach) was there and that detective Alber was there? A. I did not.

Q. Do you now want to deny the fact that detective Alber was there? A. Yes.

Q. Was he there? A. No.

Q. Didn't you say that when you were leaving, he was there, "Yes" or "No"? A. I say he was not in that plant.

Q. Mr. Van Noort, answer my question—are you trying to protect anybody? A. No, I am not trying to protect anybody.

Q. Didn't you say that when you were leaving, he was there, "Yes" or "No"? A. No.

Q. Is there any reason why you will not say that detective Alber was there when you were leaving? Answer that. A. I'll answer anything if you'll ask it right.

Q. Well, answer that then. A. Officer Alber was outside of the brewery when I left.

Q. Then he was there? A. Outside, yes; when I left.

Q. Where was this officer when you saw him —officer Kovach? A. He was in the "L" with the men.

Q. And where were you when you saw him in the "L"? A. I was right with him.

Q. In the "L"? A. Yes.

Q. You don't know when he got there? A. I do not.

Q. And you don't know how long he was there? A. No.

Q. Do you know Mr. Heinrichs, the photographer? A. Yes, I know him.

Q. Was he there? A. No.

Q. At any time while you were there, did you see him? A. No.

Q. Might he have been there or was it possible that he was there and you did not see him? A. That I don't know; I did not see him. 10

Q. Do you know detective Drew of the prosecutor's office? A. Yes.

Q. Was Drew there? A. No.

Q. At no time while you were there that afternoon? A. No.

Q. You say officer Arnott was there? A. Yes.

Q. Officer Arnott, there is no mistake about that; if he was there, you could not help but see him? A. I saw him. 20

Q. When did you see him there? A. When he was there.

Q. When? A. I guess around five of three.

Q. You didn't take note of the specific time, did you? A. No, I did not.

Q. And you saw him inside the premises? A. Yes.

Q. He was there while you were there? A. Yes.

Q. And so were the other two officers, the two defendants? A. Yes. 30

Q. Officer Kovach was there? A. No, he had left.

Q. He had already gone? A. Yes.

Q. Do you know when he left? A. I do not; he had left before I had.

Q. Mr. Van Noort, there can't be any mistake about the fact that officer Arnott was there during the entire time that you were there? A. No, that is wrong. He came there a few minutes before three, I suppose; the only way I know about the time is, the two officers were to be relieved at three o'clock, and he left and then I left.

10 Q. When did officer Arnott get there? A. About, maybe a few minutes of three.

Q. Would you say that he was there at a quarter of three? A. I can't say that.

Q. You don't know? A. He might have been.

Q. He might have been for all you know? A. Yes, he might have been.

Q. But you are sure he was there when you left? A. No, sir; I left because we both left together; we walked away together.

20 Q. The premises as I understand it, had an "L" shape to it—is that right? A. Yes.

Q. And in that "L" shape was a place where the officers were at? A. Yes.

Q. You gained your admission in there by asking for permission to go in, or did you just walk right in? A. Just walked in.

Q. How long were you in the premises? A. About twenty minutes.

Q. How many police officers did you see during
30 that time, that entire time, including detectives? A. I only saw the three and Arnott.

Q. Only four? A. Yes.

Q. That is, the three are Arnott, Kovach and the two detectives? A. That's right.

Q. You saw nobody else around or in the premises? A. Not in the premises.

Q. Wasn't officer Perry there? A. Yes.

Q. Well, that's another — you forgot about him? A. Yes. I saw him there.

Q. Who else did you forget about? A. That's all.

Q. I thought detective Alber was there? A. No, he was outside

Q. Mr. Van Noort, why is it that you want to keep Alber on the outside? A. Well, he was when I spoke to him. Don't tell me something—because I say I saw him outside. 10

Q. I am trying to get you to tell me something. A. And I am trying to tell you that you can't tell me something.

Q. You did not see a burner go out of the place there? A. No; I don't know what it was.

Q. And, as a matter of fact, you don't know what the object was that you saw going through the window? A. No.

Q. And you were not interested enough to tell the officers that you saw anything go out? A. No. 20

Q. And yet you were a friend of their's? A. Yes.

Q. And had known them for a long, long time? A. Yes, a long time.

Q. Knew them both before they were even in the police department? A. Yes.

Q. And you considered them your good friends? A. Yes. 30

Q. And yet you did not tell them that you saw anything travel out of the window there? A. No.

Q. Why not? A. Why not.

Q. Yes, why not? A. Well, because I didn't think it was any of my business to tell them.

Q. Those two officers were your good friends, you say? A. Yes.

Q. Van Noort, did you know who it was that was taking the object through that window? A. I do not.

Q. Are you trying to shield him? A. No.

Q. Are you trying to protect anybody in this thing? A. No, I am not trying to protect anybody.

Q. Then why is it you didn't tell those two men that an object was being moved out of the premises, if you saw it going through the window in the hands of a stranger? A. It was none of my business.

Q. Will you tell me what business you had in the premises then, if it was none of your business? A. I had no business in there.

Q. None? A. No.

Q. It was none of your business, was it—is that your answer? A. Yes.

Q. That is a definite answer? A. Yes.

Q. And you mean to stand by that answer? A. Yes.

Q. Was it your business to talk to Chief Tracey after that? A. Yes.

Q. Why? A. Oh, no reason at all.

Q. If it was not your business to tell the officers what you saw going out of the window, why was it your business to talk to Chief Tracey? A. Why was it?

Q. Yes. A. Just because they were two friends of mine.

Q. What friends of your's? A. McCormack and Kohn.

Q. You wanted to help them? A. Yes.

Q. If you wanted to help them, why didn't you tell them about it when you saw this object going out of the window? A. I had no business to tell them.

Q. What business did you have to see the chief? A. No business; maybe that is where I made a mistake by even speaking to him.

Q. Is that the truth now, Mr. Van Noort? A. I hope so. 10

Q. Did you tell Chief Tracey that the goods would be back the next day? A. No, that day.

Q. Was that your business? A. No, no business.

Q. How did you know that the goods would be back the next day? A. I didn't.

Q. Then why did you say to the chief that you would get them back the next day? A. I said I would see what I could do toward getting them back. 20

Q. How did you know that you could make a statement of that kind to the chief? A. I said I would see what I could do.

Q. About what? A. About getting this burner back.

Q. Getting the burner back from who? A. I don't know from who—I would find out.

Q. Mr. Van Noort, is that the answer you want us to believe? A. Yes. 30

Q. Who were you going to see about getting it back? A. I would try and find out.

Q. Who was with you when you went into this place? A. Nobody.

Q. Is that the party you were going to see? A. No, nobody was in with me. I went in there all alone.

Q. Are you sure Detective Alber did not go in there with you? A. I am sure.

Q. He was not the party that you were going to see? A. No.

Q. Well, tell the Board then who you were going to see? A. I was going to see—

Q. The fortune teller? A. Yes, the fortune
10 teller.

Q. Do you mean that too? A. No, I don't; I was—

Q. Mr. Van Noort, you are only guessing under oath—I suppose telling a truth or falsehood under oath—that means nothing to you? A. Not a bit —no more than it does to you.

Q. Were you going to see a fortune teller? A. No, you know better than that.

Q. I am very anxious to know a good many
20 things that you know. A. Keep on asking then and you will find them out maybe.

Q. I will. Who did you see to get the goods back that you promised Chief Tracey you were going to get back? A. I saw a fellow—I don't even know his name.

Q. A stranger? A. Yes.

Q. A total stranger to you? A. Yes.

Q. Was it the same fellow in the Anderson case in New York—that prohibition fellow, Mr. King?
30 A. No.

Q. What was this fellow's name? A. His name might be King.

Q. It was also a King? A. Yes.

Q. It wasn't a Queen? A. No.

Q. Who did you see? A. A party—I don't know his name.

Q. How did he look? A. Kind of a big man.

Q. Was he connected with the police department by any accident? A. No, he looked more like a brewery man.

Q. Where did you pick this brewery man out? A. I picked him out—I stopped him down on Straight Street—that's where I found him.

Q. What number Straight Street? A. At the corner of Straight and Governor Streets. 10

Q. What time did you meet him? A. I met him there about a quarter past eleven.

Q. By appointment? A. No.

Q. Morning or night? A. Morning.

Q. And you approached him, never having seen him before? A. I knew him by sight.

Q. Call him by name? A. No.

Q. Just walked up to him and said what? A. I said to him, "Now, if there is anything that was taken out of that brewery, if you can get it back, you will maybe get some people out of trouble," and he said "Well, I'll see what I can do." So afterwards, I told the chief, "I think the things will be brought back." I don't know about any other thing connected with it. 20

Q. This fellow you saw didn't promise you anything? A. No, sir.

Q. And did not tell you when he would send the goods back? A. No. 30

Q. Or what would be sent back? A. No, sir.

Q. Or where you could get them? A. No.

Q. Or when he would deliver the burner? A. No.

Q. Told you nothing about the particulars at all? A. No, sir.

Q. And you on the strength of that went back

to Chief Tracey and said that you were going to get the goods back? A. Yes.

Q. That's your story, is it? A. Yes.

Q. And, I suppose, you are going to stick to that? A. Yes, I will.

Q. Did you see this party, or did you have somebody else see this stranger? A. I saw him.

10 Q. You have not changed your story tonight from the last time you testified here? A. Why?

Q. Did you? A. I don't think so.

Q. Your recollection of what you said here last Tuesday night is distinct? A. Yes.

Q. You were a witness in a proceeding here last Tuesday night? A. Yes.

Q. And you testified at that time, did you not, in the matter of the investigation of charges against officer Perry? A. Yes.

20 Q. I ask you if it is not true that you were asked this question, and gave the following answer to the question:—

> "Q. When? A. The next morning I walked through the place and was interested in looking around.
>
> Q. What did you do then? A. Well, I went and saw this party, or got some one else to see him, and he said he would bring it back."

30

Did you testify to that statement of facts? A. If it is there, I must have.

Q. Was that true or false? A. That is just what I say now.

Q. Did you go yourself to this stranger, or did you get someone else to go to him? A. I went myself.

Q. What did you mean when you said, "I got someone else to see him," at the last hearing? A. I said I did.

Q. Mr. Van Noort, I'll read it again: "Well, I went and saw this party, or got someone else to see him." What did you mean by that? A. That's wrong.

Q. What's wrong? A. I say I saw him. 10

Q. Then it was not true that you got somebody else to see him? A. No.

Q. And, if you said that at the last hearing, it was not true but false? A. It must be, because I saw him myself.

Q. Let me ask you this question: You were asked this: "You were perfectly willing to see somebody stealing something out of the window without notifying the police" and the reason you gave in your answer was, because you were not 20 interested—is that correct? A. Yes.

Q. And that is the only reason? A. Yes.

Q. Have you changed your mind about the reason or reasons? A. No.

Q. Is it not a fact that at the last hearing you said the reason was "because I think the law is a joke—it belonged to the man, and I thought he was only stealing what rightfully belonged to him"? A. That's right.

Q. Then the reason you did not tell the officers was, because the law is a joke—is that right? 30 A. Yes; that's right.

Q. It is true that at the last hearing you said the man that took the goods took his own goods? A. I thought he was.

Q. Didn't you say he was taking his own goods? A. I did not know if they were or not.

Q. Let me read you this question asked you and your answer to the question again:—

> "Q. You were willing to stand by and see somebody stealing something and not tell the police? A. Yes, I would, because I think the law is a joke—it belonged to the man, and I thought he was only stealing what rightfully belonged to him."

Is that true or false? A. True.

Q. Then the goods did belong to the man? A. I can't say that.

Q. Why did you so state at the hearing last week? A. Because I thought they did.

Q. And when you said, "it belonged to the man," you now say your answer was intended to mean, "you thought it belonged," is that right? A. That is right. .

Q. Mr. Van Noort, you were asked by Mr. Spitz how the man looked, were you not? A. Yes.

Q. And you told him that you did not know, because you could not see him very well—is that right? A. Yes.

Q. Despite the fact that you could not see him very well, you were able to go up to him on the street the next day and know that he was the man who took the goods? A. I didn't know if he was or not.

Q. Oh, you just took a chance and said, "Are you the fellow who took the thing out"—is that it? A. Yes.

Q. Did he say "yes"? A. He didn't say "yes" or "no".

Q. What was Detective Alber doing outside

there, when you got there? A. You will have to ask him that.

Q. You don't know? A. I do not.

Q. You don't mean that he was on the outside near that window, do you? A. No.

Q. You are sure of that? A. Yes, positive.

Q. What did you just refer to when I asked a minute ago what he was doing there and you answered, "You will have to ask him that", — why is it that now you want to answer for him? A. He's here; he will answer for himself. 10

Q. I asked you what he was doing when you went out, and your answer was "see him" or "ask him", and when I said, "Was he by the window in the rear," you said "No, he was not";—why do you say he was not? A. It was impossible for him to be near the window—here is the door, (indicating) and— 20

Q. He was not near the window? A. No.

Q. But he was in front of the door? A. Yes.

Q. Where did Alber come from before he got to the door? A. I don't know where he came from.

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

Q. Do you know if detective Alber was near the window in the rear? A. I do not.

Q. Let me ask you this: When you saw these police officers, you say they were in the "L" shape? A. Yes. 30

Q. Did they at any time leave that position while you were in the premises? A. No, sir.

Q. Were they in a position to see this window through which this object vanished or disappeared? A. No, sir.

Q. And, you never mentioned it to them? A. No.

Q. And you had no occasion, either directly or indirectly to refer to the fact that something went out of the window? A. No.

Q. And you don't know what time it left the place? A. No.

Q. That was the only thing you saw go through the window—that pipe as you described it? A. Yes; that's all.

10

Q. But what it was, you don't know? A. No.

Q. I believe that you have testified that you never knew what it was that went out? A. I didn't know—not at the time.

Q. As a matter of fact, you don't know what it was? A. No.

Q. What class of object or what the character of the thing was that went out of the window, you don't know? A. No.

Q. You never learned? A. No.

20

Q. You have no personal knowledge of it? A. No.

Q. Might somebody have been putting something in through the window, instead of putting it out—that is just a thought of my own? A. I don't think so.

Q. You are not sure though? A. No.

Q. This object you say might have been going in, instead of going out—that is possible? A. Yes, but not probable.

30

Q. What I have in mind is this: it may be that some police officer found something in the yard back there and was putting it in the premises, or was helping it be put in there; I want to know if you can say whether the object was coming in, instead of going out? A. I can't.

Q. You will not say that anything went out of the place, so far as you know? A. No.

Q. And, that you are sure of? A. I am sure of.

Redirect Examination by Mr. Spitz:—

Q. Mr. Van Noort, when you saw this man, he had something in his hands, did he not? A. I saw something in the window—somebody lifting something in the window. 10

Q. He had something in his hands? A. Yes.

Q. Going towards the window or from it? A. In the window.

Q. He was then by the window with something in his hands? A. Yes.

Q. Did you see him lift it up through the window? A. No, I did not.

Q. Did you see someone putting a piece of machinery out of the window? 20

Mr. Weinberger—I object to the form of the question, on the ground that it is leading and suggestive; he is a witness for the city, and I don't think it proper for counsel to suggest it.

Mr. Tilt—It is a proper question; we'll allow it.

A. Yes. 30

By Commissioner Tilt:

Q. Mr. Van Noort, what time did you get down there to 17 Ann Street that day? A. About twenty minutes of three.

Q. And was that the first time you had been there that day? A. Yes.

Q. And who was in charge of the premises when you got there?

Mr. Weinberger—That is objected to; it calls for a conclusion.

Q. What officers were in charge there? A. I
10 don't know who was in charge, but officers Kohn and McCormack were there.

Q. Whereabouts were they? A. In the "L" there.

Q. What were they doing there? A. Sitting there, waiting to be relieved; that's what they told me.

Q. They told you that they were there on duty? A. Yes.

Q. So then, they were there in charge? A. Yes,
20 I suppose so.

Q. They told you they were on duty? A. Yes.

Q. You knew then that the place had been raided prior to that time? A. Yes.

Q. And did you speak to them as you went in? A. Oh, yes.

Q. Did you tell them what your business was there? A. No.

Q. Did they ask you? A. No.

30 Q. When you saw them there, you went right by them and in? A. Yes.

Q. On into the premises? A. Yes.

Q. What was your purpose in going there at that time? A. Only curiosity, commissioner.

Q. Just curiosity for what? A. Just to see the plant.

Q. Is that the first time you had seen the plant? A. Yes.

Q. And the first time you had heard of it? A. Yes.

Q. How long were you in there? A. I was in there about twenty minutes.

Q. And you saw all the plant? A. Yes.

Q. And then what did you do? A. I walked out and went away.

Q. You went out the way you went in? A. Yes. 10

Q. Was officers McCormack and Kohn there? A. Yes.

Q. Were they where you had left them before? A They left about the same time as I did.

Q. But they were in the same position when you went out as when you came in there? A. Yes.

Q. Did you speak to them on the way out? A. Yes. 20

Q. What did you say? A. Nothing; I spoke to officer Perry when he came in.

Q. What did you say to Kohn and McCormack when you went out—speak to them? A. They said they were going, and I said, "I am too."

Q. Make any remarks about the property there? A. No.

Q. Then you went out? A. Yes.

Q. Went away from the premises entirely? A. Yes. 30

Q. And you didn't go back? A. No.

Q. At no time? A. No.

Q. So I understand then, that officers Kohn and McCormack were in charge there when you left the premises—is that correct? A. Yes; but I spoke to officer Perry as he came in.

Q. Where did you see officer Perry? A. Just inside as I was going.

Q. Just inside where? A. Inside right by the "L"; I shook hands with him when I was leaving.

Q. Say anything to him? A. No, only "hello."

Q. You did not tell officer Perry that you saw some stuff going out, did you? A. I did not.

By Commissioner Christie:

10 Q. Mr. Van Noort, you have been a brewer? A. That's right, commissioner.

Q. And you know pretty nearly everything that is used in a brewery? A. Yes, in a regular brewery.

Q. Wasn't this a regular brewery? A. No.

Q. Did you take notice what was in there when you were there? A. I did not. All I was interested in, commissioner, was the beer and the vats; I looked at those; and a lot of the other
20 stuff was Greek to me.

Q. Did you notice while in there a bale of hops? A. I did not.

Q. Or any bags of sugar or anything of that kind? A. No.

Q. They were not in there when you were in there? A. They could be there. I don't know.

Recross Examination by Mr. Weinberger:

Q. Mr. Van Noort, when officer Perry got
30 there, you don't know—you don't know the time? A. I said, only that officers Kohn and McCormack were to be relieved by officer Perry at three o'clock. That is all I know as to what time it was.

Q. But, as a matter of fact, you don't actually know when officer Perry got there? A. No.

Q. And whether he was on the premises at the time you saw this object coming in or going out the window, you don't know? A. No.

Q. You saw nobody in the premises excepting the police officers? A. That's all.

Q. The only human being in the place proper outside of the "L" shape was yourself—the only human being so far as you could see—you get my point? There was somebody else at the other end of the building. 10

Q. I mean inside the premises? A. Only myself.

Q. I am clear about that now, am I? A. I think you are clear.

Q. You did see a number of barrels there? A. Yes.

Q. I think you were asked that question? A. He asked me about hops—I saw barrels, yes. 20

Q. Officer Arnott was in the place proper part of the time while you were there? A. Officer Arnott was there—I was outside when officer Arnott went inside.

Q. Just before you left, how long would you say that officer Arnott was there—ten minutes, five minutes, twelve minutes, how long about? A. I don't think he was there more than five minutes —I don't think so.

30

By Mr. Spitz:

Q. Did you leave with officers McCormack and Kohn? A. I suppose they left right after me. They said they were going right away at the time, and I went the other way; they said they were going.

Q. Where did you meet officer Perry, outside or inside the building? A. Inside.

Q. As you were going out? A Yes.

Q. Did officer Perry say anything to you? A. Only we shook hands.

Q. Do you know whether he had just arrived when you shook hands? A. He had just arrived.

By Commissoner Christie:

10

Q. There has been a question asked by counsel that confused my mind—counsel asked you the question: there was no one else in the building besides yourself at the time this stuff was going out of the window;—there was somebody else in that building, was there not, in the main building where the brewery was? A. Yes.

Q. Positively someone there? A. Yes, the one that put the piping out.

20

Q. Now, you got somebody in again? A. No, only that one—I told you that before.

Q. Is he out or is he in this time—which is it? A. He was in.

Q. Who was in? A. Whoever it was that lifted that machinery out was in.

Q. Did you see another man in the place proper now when you were in there? A. I did.

Q. How long was he in there? A. I don't know how long he was in, because I didn't see him for two minutes about.

30

Q. How did he get in there? A. I don't know.

Q. How did he get out? A. I don't know.

Q. Did you see him get out? A. No.

Q. Did you see him get in? A. No.

Q. Was he dressed? A. I think so—you know better than to ask that.

Q. I don't know—you say you saw him? A. I say I think so.

Q. Wear a hat or cap? A. I don't know if he had a hat or cap on.

Q. Wear a coat? A. I think so.

Q. You don't know? A. I didn't notice; I didn't look at him enough to notice.

Q. You weren't interested in seeing what he was doing? A. No. 10

Q. Didn't see him do anything? A. No.

Q. There can't be any mistake about the fact that you did not see him do anything? A. I saw him put this machine out.

Q. You saw him lifting the machine out—which is correct? A. I saw him lifting the machine.

Q. Was it a machine he was lifting? A. A piece of pipe. 20

Q. You don't know if it was a machine or what it was, do you? A. No.

Q. Why do you call it a machine? A. It was a piece of piping.

Q. A pipe? A. Yes.

Q. I didn't ask you what you drank there; do you think that might have some bearing on your seeing things? A. Maybe.

Q. How much did you have? A. Just one.

Q. That was enough? A. Yes, that was enough. 30

Q. What was it—it was enough anyway you say? A. Yes.

Q. And you couldn't take another? A. No.

Q. And it was after that that you saw these things? A. Yes.

Q. You call it a pipe moving out of the window? A. Yes.

Q. Was it a shadow possibly of something going in? A. It might have been.

Q. It might have been a shadow, you think? A. Yes.

Q. Might it have been your shadow? A. No, not mine.

Q. You don't know what the object was, if it
10 was coming in or going out?

Withdrawn.

Q. This man or object or shadow as you call it under three different names, was in what part of the building when you first saw him? A. He was away down at the end of the building.

Q. At the window? A. Yes.

Q. In going in and out of that window, it was a physical impossibility for an person in the "L" to see at that point? A. That is right.

20 Q. That is correct? A. Yes, that's correct.

Q. And only a man in your position, namely in that room proper, could see? A. That is right.

Q. When you took a drink, as you say you did, was that within the view of the police officers or out of their view? A. Out of their view.

Q. The place where you had this drink was in what part of the building? A. In two little rooms off the "L".

30 Q. Separate rooms? A. Yes.

Q. And one couldn't see into those rooms from the place where these officers were stationed? A. No.

Q. You didn't walk out with anything except that drink, did you? A. No, that's all.

Q. You removed nothing from the premises? A. No.

Q. You didn't take any sugar or hops, or hand anybody sugar or hops that were there, did you? A. No, I did not.

By Commissioner Fitzmaurice:

Q. Mr. Van Noort, when officer Arnott went into that building, you say you were on the outside? A. Yes, Judge. 10

Q. Were you talking to Alber, — you said he was on the outside? A. I spoke to him as I was leaving the building.

Q. Did you tell Alber that you saw something being taken out of there by somebody? A. No, Judge.

Q. Why? A. I didn't think I had a right to tell anybody anything; I was in there.

Q. What did you say to him? A. I just passed the time of day. 20

By Commissioner Tilt:

Q. Mr. Van Noort, I understood you to say, you went to Chief Tracey and told the Chief that you thought you could get the stuff back? A. I did.

Q. What time of day was that? A. About eleven o'clock.

Q. At night? A. In the morning,—the next morning. 30

Q. What did Chief Tracey say to you? A. He said "Nobody has been suspended, maybe it will help if it was back", and I said "I will see what I can do."

Q. Is that all that was said by the Chief to you and you to him? A. That's all.

Q. This man's back was towards you when he was lifting his pipe or machine? A. Yes, it was.

Q. You never saw his face? A. No.

Q. And the next day you met this fellow, although you did not see his face? A. Yes.

10 City's case rested.

Mr. Weinberger—For the purpose of the record, may I at this time move for a dismissal, first, on the ground that the City has failed to establish a prima facia case against these officers; second, they have not made out or proven the charges necessary to be established or proven in accordance with the law, and third, the City has not
20 established by such evidence as has been presented a prima facia case on which a judgment could be rendered by this Board or Tribunal?

Commissioner Tilt—Motion denied.

Exception granted.

DAVID ARNOTT, a witness produced on behalf of the Defendants, being duly sworn accord-
30 ing to law, upon his oath, testified as follows:

Direct Examination by Mr. Weinberger:

Q. You are connected with the Police Department of the City of Paterson? A. Yes, sir.

Q. And for how long? A. It will be nineteen years the first of June.

Q. And you have lived in the City of Paterson how long? A. I was born here.

Q. How long is that? A. Fifty two years.

Q. Were you in the service of the department on the 6th of January, 1926? A. I was; yes, sir.

Q. Did you have occasion to go down to this so called Brewery? A. I did.

Q. And you went there for what purpose? A. Just curiosity sake.

Q. When you got there, it was about what time? A. Five minutes to three. 10

Q. Did you go into the premises? A. I did.

Q. And were you in uniform at the time? A. No; I had just gotten through duty.

Q. Did you meet any officer of the department there when you got there? A. Officers Kohn and McCormack.

Q. Where were they stationed? A. They were at the entrance of the building, in the small end of the "L". 20

Q. Would that mean the fore-part of the building? A. Yes, the driveway leading into the Brewery.

Q. Did you go into the premises there? A. Yes.

Q. Was there anybody there in the premises when you got in there? A. No, just the two officers.

Q. How did you fix the time that you were there? A. Well, I left the Police Station at eighteen minutes to three, and it took me twelve minutes time to walk down there. I met officer Kovach at the corner of Tyler and Paterson Streets and asked him where the Brewery was and he said go down one block and-- 30

Q. Well you went down to the Brewery as he had directed you? A. Yes, I did.

Q. Was there anybody in the premises when you went in there? A. Officers McCormack and Kohn were at the door at the entrance.

Q. Anybody inside? A. No, sir.

Q. Did you go in? A. Yes.

Q. See anything there as regards the hops, bags of sugar and other things and utensils usually used in breweries? A. Yes, sir.

Q. Where were they? A. They were lying on the floor there.

10

Q. I show you what purports to be a photograph. exhibit P-3 offered here, and ask you if you can identify those various articles as being in there when you were there? A. Yes, sir.

Q. I show you exhibit P-2, and ask you if you saw those articles in there? A. Yes.

Q. I show you exhibit P-1, and ask you if those things were in there? A. Yes, sir.

Q. Exhibit P-4, and ask you if they were in there? A. Yes, sir.

20

Q. How long did you stay in the premises? A. I was there about five minutes.

Q. Was there anything removed from those premises while you were there? A. No, sir.

Q. Was there anybody that came into those premises or went out while you were there? A. Nobody.

Q. Other than the two officers stationed in the "L"? A. That is all.

Q. Did you see my friend Van Noort there? A. He was on the outside at the doorway when I got there, talking to Officer Kohn.

30

Q. Did you see Detective Alber there? A. No, sir.

Q. There has been some reference to a burner; there was a burner there at five minutes to three? A. I couldn't answer that question. I am not positive about that, as that could have been hid under the boiler somewhere and I didn't get down to look

for that; but all these articles were on the floor in my path as I went through.

Q. You have already stated that the sugar and hops were there? A. Yes, positively.

Q. Did you have a talk to these two officers on duty? A. Officer Kohn hollered and said "Come on, McCormack, here's Perry, we're going in," and I went right out with them as officer Perry came in. 10

Q. As officer Perry came in, from the time that you went into the premises until the time that you saw officer Perry come on duty, was there anything taken by anybody from the premises? A. Not as I saw. There wasn't a soul in the place

Q. How long altogether did you remain there? A. Five minutes.

Q. What time did you leave? A. Three o'clock.

Q. How did you fix that time? A. As I went in 20 there, just five minutes to three; Perry came at three o'clock to relieve McCormack and Kohn and I went out with them.

Q. Did officers Kohn and McCormack leave too? A. Yes.

Q. You saw them leave? A. Yes, sir.

Q. Did they take anything with them when they left? A. No, sir.

Cross-Examination by Mr. Spitz: 30

Q. You say you were there, officer, at about five minutes to three? A. Yes.

Q. And you say that you remained there about five minutes? A. Yes, sir.

Q. Did you go through there and take any inventory? A. No, sir.

Q. How did you notice so particulary what was there and what not? A. By just passing up the room.

Q. Notice everything was there, did you? A. Yes.

Q. You don't know what was there when the inventory was taken? A. No, sir.

Q. You don't know then if anything was missing there? A. I only know what I saw there.

Q. Officer, does your son work in that Brewery? A. My son?

Q. Yes. A. Positively not.

Q. You were in the Brewery business at one time yourself, were you not? A. Twenty years ago.

Q. You have a son? A. Yes, I have.

Q. How old is he? A. One is 31; I have four of them.

Q. Any of them work in any Breweries? A. No, sir.

Q. Had they before prohibition? A. They did.

Q. Which one? A. The oldest one.

Q. Where did he work? A. For the Hinchliffe Brewing Company.

Q. You are sure he did not work in this place before it was raided? A. Never.

Q. How do you know? A. He hasn't worked in seven months,—not for seven months.

Q. That is what he told you? A. He visits me; I am positive of that, I know.

THEODORE KOVACH, a witness produced on behalf of the defendants, being duly sworn according to law, upon his oath testified as follows:

Direct-Examination by Mr. Weinberger:

Q. Officer, you are connected with the Paterson Police Department? A. Yes, sir. 10

Q. How long? A. Three years in May.

Q. You have lived in the City of Paterson how long? A. Twenty-eight years.

Q. Do you know the officers on trial,—Kohn and McCormack? A. I do.

Q. On the sixth day of January, 1926, were you down at the premises know as the good old Brewery of 17 Ann Street? A. I was.

Q. What time did you get there? A. About 2.15.

Q. In the afternoon? A. Yes, sir; in the afternoon. 20

Q. And did you go into the premises? A. I did.

Q. Who was there when you were there? A. Officers Kohn and McCormack.

Q. While in the premises, did any others come in there? A. Yes, sir.

Q. Who came in? A. Mr. Van Noort and Sargeant Alber.

Q. Were you on the premises when they came in there? A. Yes, sir. 30

Q. How long were they there? A. I couldn't exactly say.

Q. Well, approximately how long? A. I should judge about fifteen minutes.

Q. So that you, dectective Alber and Mr. Van Noort were in the premises together for about fif

teen or twenty minutes? A. About fifteen minutes at a rough guess.

Q. It may have been a little longer? A. A little longer or a little less, I don't know.

Q. Did you see any hops and sugar there? A. Yes.

10 Q. And other various articles there? A. I did.

Q. What time did you leave the premises? A. Ten minutes to three.

Q. Was there any articles removed from the premises by anybody while you were there? A. None.

Q. Were the two officers who are on trial on duty there? A. They were.

Q. Where they stationed? A. They were both stationed in the "L."

20 Q. In the "L" room? A. Yes.

Q. That is, the entrance you had to go through to go into the place? A. Yes, sir; the only entrance

Q. Did you observe an open window in the rear of the premises? A. Yes; one was open half way.

Q. And the other was closed? A. Yes, closed tight.

Q. Detective Alber you say was there? A. Yes.

Q. Is he a plainclothes man or uniformed officer? A. Plain clothes, connected with the traffic depart-
30 ment; at that time he had on a coat sweater.

Q. So that when you left at ten minutes to three, as you say, you left Mr. Van Noort and dectective Alber there? A. No, Alber was gone and Mr. Van Noort stood talking to Kohn and McCormack when I went out.

Q. The three of you were in the room together? A. Yes.

Q. And when you were there about fifteen minutes, then it was that you went out? A. Yes.

Q. And Alber went out? A. Yes; he went out before me.

Q. How long before? A. I should judge about five minutes or so.

Q. Whether he came back or not, you don't know? A. He came back when I came back later in the afternoon, but that was after everything was missing. 10

Q. Alber did come back there later? A. Yes, but after the things were missing.

Q. Alber left there before you did? A. Yes.

Q. But where he went, you don't know? A. No.

Q. Van Noort was still in the place with you when Alber left? A. Yes.

Q. The two officers, McCormack and Kohn, were stationed in the "L" when you were in there with VanNoort? A. Yes. 20

Q. Who left first, you or Van Noort? A. I did.

Q. You went out? A. Yes.

Q. And then Van Noort left? A. Yes, officers Kohn and McCormack and Mr. Van Noort.

Q. Anybody else come in there while you were there? A. Not when I was there.

Q. You didn't see any shadows or smoke screens or travelling spirits in that place, did you? A. No. 30

Q. I mean outside the building? A. No.

Q. Any sugar there? A. Yes.

Q. What else? A. Hops.

Q. What else? A. Everything used in the line of making beer.

Q. I am not familiar with what is used, and you will have to be a little more specific. Showing you

Exhibit P-4, see those things in there? A. As far as the utensils are concerned, they were there, but not all this foam on the floor. That was all gone.

Q. The foam on the floor was gone? A. Yes.

Q. But everything else was there,—is that what you say? A. Yes.

Q. Exhibit P-2, were those articles there? A. Yes.

Q. Exhibit P—1, were they in there? A. Yes.

Q. Exhibit P-3, were they there? A. All but the people on it.

Q. Afterwards, you say you had occasion to come back? A. I was detailed there.

Q. What time? A. I was detailed there when I pulled the 3.57 box at Broadway,—I was detailed there by the Sergeant on the machine from headquarters.

Q. Did you go into the place? A. Yes.

Q. Were the barrels there then? A. Yes, they were.

Q. And the sugar? A. That I don't know because they were complaining about things being missed.

Q. The sugar was gone? A. Yes.

Q. And the hops were gone? A. Part of the hops.

Q. So that the articles you had seen there when you arrived at ten minutes to three were not there when you were detailed there at about four o'clock? A. I would say 4.10, some of them were missing.

Q. A good part of them were missing? A. I suppose the most important part.

Q. What was that? A. The pump was missing, the blower was missing and a lot of tools and overalls.

Q. But those things were there when you left the first time? A. Yes, sir; positively.

Q. And when you came back later they were gone? A. They were gone.

Q. You did'nt take them? A. I am sure of that.

Q. Did any other officer or detective come in there while you were in the premises? A. After everything was missing, yes. 10

Q. Who? A. Detective Simpton and Presta.

Q. And detective Alber came back, you say? A. He came back.

Q. How long did he remain there then? A. Not long.

Q. About how long? A. I couldn't say I was

Q. About how long? A. I couldn't say because I was talking to the Federal men at the time, and I didn't notice when he went. The Federal men were there when I was detailed there. 20

Q. Not the first time you were there they were not there? A. No.

Cross-Examination by Mr. Spitz:

Q. Were you on duty at 2.15? A. I was.

Q. How did you happen to go down to this plant? A. It is on my post, and only two days previous I turned in to hit it. 30

Q. What did you do when you got there? A. I Just walked in; I wanted to see what kind of a place it was that I did turn in.

Q. Who was there? A. Officers McCormack and Kohn.

Q. Have a talk with them? A. Yes.

Q. Where were they standing? A. They were sitting at the "L".

Q. Both sitting together? A. Yes; side by side.

Q. How long did you remain there? A. I stayed there from about 2.15 to ten minutes of three.

Q. How do you know that? A. Well, I pulled out my watch and looked at it, and I remarked at the time, "Boys, it's ten minutes to three and I am going to pull in."

Q. You left there at ten minutes to three? A. Yes.

Q. You were not there when the inventory was taken, were you? A. No, sir.

Q. You don't know if anything was missing then, do you? A. I saw everything that was in the Brewery for the making of beer.

Q. You left at ten minutes to three and did not get back until after four? A. After four.

By Commissioner Fitzmaurice:

Q. Officer, you say that Mr. Van Noort and Detective Alber,—did they come there to the place together? A. Not together, but they were right behind one another.

Q. How far behind one another? A. About a minute's difference maybe,—a couple of minutes, not more than three minutes anyway.

Q. Did detective Alber stay there fifteen minutes? A. I don't know how long; he came in and looked around and went out again; he left first and before I did.

By Commissioner Tilt:

Q. This place you say was on your post? A. Yes, sir.

Q. How long had you been on that post? A. That was my second month. I worked it once mornings, and this month afternoons.

Q. For two months? A. Well, a good month all told.

Q. Are you the officer that made the complaint? A. I turned it in.

Q. When? Q. About two days previous, I smelled something like beer on my post. 10

Q. When had you first noticed that smell of beer? A. Two days before it was hit.

Q. The first time? A. Yes, sir; it was misty and I kind of smelled beer being made and I told the Sergeant and the sergeant told me to go back and get enough evidence so that we could get a search warrant and hit the place, but I didn't get a chance that day, and the following day I went back and went over the roof and saw the apparatus and the barrels and I told the Sergeant and he said "We'll turn it over the detective department," and the following day in the morning it was hit. He claims he didn't tell the detectives about it, but it was hit the following morning. 20

Q. What time of the day did you patrol that section? A. This month from 12 to 8 at night.

Q. And the month previous, what were your hours? A. From four in the morning until tweive noon, when I was working the post. 30

Q. And you never knew that was a Brewery was being conducted there until two days before it was pulled? A. Yes; two days before it was hit. It has always been a garage there. I worked that post a long time ago, when the garage was built.

Q. That would be in November that you first had that post? A. Yes.

Q. Were you here at the last hearing in this room? A. I was.

Q. Did you hear Mr. Van Harken testify? A. I did.

Q. Did you hear him testify that he took that
10 place over in November? A. I didn't take particular attention to what he was saying.

Q. What was in this place before the Brewery? A. It was used for private garages.

Q. Did you ever observe the carting of those big tanks in there? A. No. There was a lot of trucks being stored in there, big trucks on both sides in the driveway,—produce and everything else. I never saw anything go in there that would draw my attention
20 that anything was wrong.

Q. And no one ever told you about it? A. No.

Q. And the only way you discovered this Brewery was misty morning when you say you smelled something like beer? A. Yes; when I smelled the beer being made.

Re-Direct Examination by Mr. Weinberger:

Q. Officer, I understood you to say that Detective Alber and Mr. Van Noort were in there about fifteen
30 minutes, and that Alber then left first. A. Yes; Alber left first.

Q. Whether they came in the door together, you don't know? A. I saw Van Noort first.

Q. You don't know if they came in together through the "L" shape part of the building? A. No.

Q. You saw Van Noort come into the room proper? A. I saw Van Noort first when he went over to the

beer, and I was down at the window by the kettle.

Q. You were at the window? A. Yes; that is where I was.

Q. Maybe you were the shadow Van Noort saw down at the window? A. Perhaps so.

Q. And while you were at the window, you were looking things over? A. I looked over everything, and even climbed on the platform and looked inside the kettle. 10

Q. You were in uniform? A. Just as I am now.

Q. In uniform as you are now? A. Yes.

JOSEPH RAFFERTY, a witness produced on behalf of the Defendants, being duly sworn according to law, upon his oath testified as follows:

20

Direct-Examination by Mr. Weinberger:

Q. Officer, you are connected with the Police department of Paterson? A. Yes, sir.

Q. How long? A. Three years.

Q. What department? A. In the garage.

Q. What part of the works are you? A. I am a chauffeur.

Q. On the sixth day of January, 1926, what were your duties? A. To drive the patrol wagon.

30

Q. Did you have occasion go down to this Brewery at 17 Ann Street? A. Yes, sir.

Q. What time in the afternoon did you go down there? A. I left headquarters at ten minutes of three.

Q. And you proceeded down to this Brewery? A. Yes.

Q. For what reason? A. I drove officer Perry there.

Q. And officer Perry was the relief man sent down there to relieve the officers on trial. A. Yes.

Q. What time did you get there? A. About five minutes to three.

10 Q. And officer Perry went in about that time with you? A. Yes.

Q. When you went into the premises, did you see the two officers there? A. Yes.

Q. Where were they stationed? A. One was on the outside near the door, and the other was just inside.

Q. You went inside, did you? A. Yes.

Q. See Van Noort there? A. No.

Q. Did you personally look the place over? A. No.

20 Q. You are sure, however, that you got there five minutes to three? A. Five minutes to three.

Q. And you are sure that officer Perry was with you? A. Yes, sir; I brought him down there.

Q. There is no doubt about that? A. No.

Q. Who did you take home? A. Officers Kohn and McCormack.

Q. They go back in the patrol with you? A. In the Ford.

Q. In the Ford car? A. Yes.

30 Q. They didn't have any sugar with them that they in use in breweries? A. No.

Q. Or malt or hops? A. No.

Q. Did they have anything with them so far as you could discern? A. No.

Q. When you first went into the place, was there anyone there other than officers Kohn and McCormack? A. I didn't see anyone.

Q. See officer Arnott there? A. On the outside.

Q. See Detective Alber there? A. No.

Q. Van Noort there? A. No.

Q. None of them? A. No.

Q. From the place or location where you were at when you were in there, could you see the various articles in there? A. I couldn't see nothing.

Q. Could you see a window in the rear? A. I was in the "L" shape and the window was about a block away from me and I couldn't see. 10

Q. How do you know the window was ablock away? A. I seen it in the morning, the morning I was there with the detectives.

Q. Was it possible to see any window or any part of the premises from the "L" shape where you were in? A. Only the driveway.

No Cross-Examination. 20

ANOTHONY KOHN, beings worn according to law, in his own behalf, upon his oath, testified as follows:

Direct-Examination by Mr. Weinberger:

Q. Officer Kohn, you live where? A. 285 Marshall Street, Paterson. 30

Q. And you have lived in Paterson how long? A. Forty-five years. I was born here.

Q. And you have been connected with the Police Department how long? A. Nearly nineteen years.

Q. What work have you been doing in the police department? A. I have been floorman for about seven years, and then I was appointed on the patrol four or five years previous to that.

Q. What were your duties on the 6th of January, 1926? A. I was on reserve duty.

Q. Assigned to the premises at No. 17 Ann Street? A. Yes.

Q. And who detailed you to work there? A. Captain Murner.

Q. What time of day were you assigned there?
10 A. About five minutes to one.

Q. Who did you go down to those premises with? A. Officers McCormack and Rafferty.

Q. Who was there when you got there? A. Sergeant Lord, Ayres, Bland and Heinrichs.

Q. Heinrichs, the photographer? A. Yes.

Q. Do you know if there was an inventory taken of the goods and merchandise on arrival there? A. Yes; Sergeant Lord told me he had.

Q. You were not present when it was taken?
20 A. No.

Q. I show you Exhibit P-1, P-2, P-3, and P-4, and ask you whether or not the different articles you see in those photographs were n the premises when you got there? A. Yes, sir; everything.

Q. Were they there when you left? A. The foam on the floor wasn't there, because I cleaned it off.

Q. It was there when you got there? A. Yes; Sergeant Lord wanted it cleaned, and I took the
30 hose and cleaned it.

Q. Besides the foam that was cleaned up, was there anything else that was cleaned out while you were on duty there? A. Two bottls of beer that Sergeant Lord took out.

Q. What were they, beer bottles? A. Bottles of ale—McCormack and I filled them for him.

Q. What time did you get there? A. Five minutes to one.

Q. And you left there when? A. Three o'clock.

Q. Who relieved you? A. Officer Perry.

Q. From the time that you got there until three o'clock when you were relieved by officer Perry, did anybody come into the premises? A. Several.

Q. Who? A. I'll have to read these off: Seaggeants Lord, Alber, Ayres, Bland, and Schielke, Morrison, Kovach, Alexander, Perry, McCormack Heinrichs, Drew, Van Orden, Van Noort, Arnott, Vogel and myself and a man next door there by the name of Hoffman—he was there with Sargeant Lord when I got there. 10

Q. Referring now to my friend, Van Noort for a minute, who did he come into the place with? A. Van Noort was called into the place.

Q. By whom? A. Detective Alber. 20

Q. And did they come in together? A. Yes.

Q. And did they leave together? A. No, they did not.

Q. Who left first? A. Detective Alber. He was in before Van Noort; Perry the same.

Q. Was officer Kovach there? A. He went ten minutes to three.

Q. When did he come in there, about when? A. Around twenty minutes after two.

Q. How long did he remain? A. He left there about ten minutes to three—half an hour. 30

Q. While officer Kovach was there, was it then that detective Alber came in first and Van Noort afterwards? A. Yes, Alber came in.

Q. When they came in, Alber and Van Noort, did Alber have authority to call in Van Noort? A. He asked me first, and I said "It is up to

you, you are my superior," and then he hollered out to him "Come on in, John."

Q. And you left him in? A. Yes; sure.

Q. Did either of those men take anything out while you were there, so far as you know? A. No.

Q Did anybody remove any of the articles out
10 of there while you were there from the time that you came in there on duty up to the time that you were relieved by officer Perry? A. Sergeant Lord took two bottles of ale.

Q. Excepting for those two bottles of ale? A. And Schielke and Van Noort knocked the plug out of the cooler and let the beer run out all over the floor.

Q. And that stayed there? A. Yes, it was dead beer; and that was right after I had cleaned
20 the floor.

Q. As a matter of fact, you were stationed at what point of the premises? A. I was all over, but at that time I was sitting at the door.

Q. In the "L" room? A. Yes, sir.

Q. You had occasion to keep your eye on things? A. Well I was sitting there in the "L"Sergeant Lord gave me a cigar to smoke.

Q. Could you see the rear windows from the point you were stationed at? A. No, sir; you
30 couldn't see the rear windows from where I was at.

Q. When Van Noort and Detective Alber went into the place, where did they go? A. They went over where the beer was.

Q. And where was the beer? A. It was right opposite the "L" where I was. You could see them; they were four or five garages there—separate rooms.

Q. And in that separate compartment was where the beer was? A. Two barrels there.

Q. Who of the two left first? A. Alber.

Q. And then who left? A. Then Van Noort came down and he stopped and talked to me.

Q. How long after Alber left, did Van Noort remain? A. About four or five minutes.

Q. Where did Alber go, do you know? A. I don't know; he went out the front way. 10

Q. You don't know where he went? A. No, sir.

Q. Did Mr. Heinrichs come in there that afternoon? A. He was there when I got there.

Q. There has been some reference made to a burner,—did you see any burner leave the premises while on duty? A. No, sir.

Q. Did you know that any burner had been removed or was in fact removed? A. No, sir; I did not. 20

Q. Did you make an inventory of the goods there? A. I looked everything over that was in the place.

Q Did you make an inventory? A. Just in my mind. I took Sergeant Lord all over the place and showed him every tool.

Q. That afternoon at three o'clock, when you left, was everything there that you saw when you came in at about one o'clock? A. Yes, sir; everything was there. 30

Q. Sure of that? A. Positive.

Q. Was officer Arnott there? A. He came there at about two minutes to three.

Q. Did he go inside the premises? A. Yes, sir; he did. I was outside talking to Van Noort, and I said "Come on, I'll go in and show you where the beer is."

Q. Was officer Rafferty there? A. Yes and Perry and McCormack too.

Q. Who took you home? A. Officer Rafferty.

Q. How did you go home? A. In the Ford car—me and McCormack.

Q. Did you at any time permit any person to go into the premises from the time you were there
10 until the time that you left who had no right to be there or who was not in the custody of some superior officer? A. No, sir.

Q. Did you knowingly permit anybody to take anything out of the window, if in fact anything was taken? A. No, sir; I did not.

Q. Did you carry out every order that was given to you by your superior officers with regard to your duty at the premises at 17 Ann Street that day? A. Yes, sir.

20

Cross Examination by Mr. Spitz:

Q. On January 6th, 1926, the day that you were sent down to 17 Ann Street, who detailed you there? A. Captain Murner.

Q. Did he give you any instructions? A. He told me to permit nobody in there, to look out for things—he said, "You have got to go down and watch the brewery."

Q. He told you to leave nobody in there? A.
30 Yes. He said that Sergeant Lord was down there too.

Q. His instructions to you were to see to it that nothing was taken out of the brewery? A. Yes, sir.

Q. How long did you say that you were on the police force? A. It will be nineten years the first of June.

Q. And you say you carried out the instructions given you? A. Yes.

Q. Why did you let John Van Noort in there? A. The sergeant called Van Noort in.

A. The sergeant? A. Sergeant Alber.

Q. Was he in charge? A. No.

Q. You have been a police officer for nineteen years? A. Yes. 10

Q. And you say that Sergeant Alber was not in charge there? A. Yes.

Q. And yet you allowed Sergeant Alber in there? A. He is my superior; and we always take orders off our superior. We are policemen twenty-four hours a day.

Q. You were in charge there? A. Yes, me and McCormack.

Q. And you knew what your instructions were from Captain Murner? A. Yes. 20

Q. And yet you allowed Van Noort to go in there?

Mr. Weinberger—Objected to. He came in there with Alber, a superior officer. The rule is that the superior officer controls the situation.

Commissioner Tilt—The question is perfectly proper.

30

A. Yes.

Q. Was Sergeant Alber on duty? A. No, I believe it was Alber's day off. He came in there with a sweater and cap on.

Q. You knew that, did you? A. He told me.

Q. Then you knew it? A. Yes.

Q. And your excuse for permitting Van Noort

in there is because Detective Alber told you to? A. He mentioned for him to come on in; he went to the door and said "Come on in, John, its alright. z

Q. And that is your reason for allowing Van Noort to go in? A. Yes; that is my reason. Alber was my superior.

10 Q. And you were there for the purpose of seeing that nothing was taken out? A. Yes.

Q. How big a room is this? A. It is about seventy-five feet from wall to wall, and the "L" shape part is about twenty feet.

Q. Did you so station yourself there so as to have a good view of the place? A. Yes, in the business part of the place; I got a seat there—sat down on some lumber.

Q. Did you have a good view of the premises 20 from where you sat? A. Yes, where the beer was.

Q. Have a good view of all the premises? A. No, not all.

Q. Whynot? A. You couldn't see on account of that "L" there.

Q. Why didn't you so station yourself so that you could see all of the premises? A. You couldn't. I just sat there where I could see the beer.

30 Q. You were sent down there to guard the place and see that nothing was taken out? A. Yes.

Q. And yet you sat in the place where you did not have a full view of all the premises? A. Yes; that's right. I sat down there.

Q. Officer Perry came in just as you were leaving? A. Yes, about three o'clock—two minutes of three.

Q. Did he come into the place while you were there? A. I was standing outside talking to Van Noort when Perry came and Dave Arnott was coming down the street and then Rafferty came and we all went in together. I said to him, "Come on in, Frank, I'll show you where the beer is;" I said, "Frank, you are in charge, we're going home," and we all went but Perry. 10

Q. When you let Van Noort in there, did you watch him? A. Yes.

Q. All the time? A. Yes.

Q. Didn't take your eyes off, him? A. No because you could see him all the time.

Q. Did you know that there was a window open in there? A. A window was open about that much in the back (indicating).

Q. You knew that? A. Yes, it was open when Sergeant Lord was there. 20

Q. You placed yourself in such a position that you could not see that window? A. Just a few minutes when officer Kovach went out.

Q. How long? A. Oh, fifteen or twenty minutes before he went out, I was all around the brewery.

By Commissioner Fitzmaurice:

Q. When detective Alber and Van Noort went down this "L" shape, did you go with them? A. No, I sat there. 30

Q. Could you see them all the time? A. Yes, I could see them.

By Mr. Weinberger:

Q. You say you were seated in this "L"

shape; was there any other means of getting into the place except through the door where you wre seated? A. That's the only way I know—and the two sky-lights.

Q. The windows and the sky-lights? A. Yes.

By Commissioner Tilt:

10

Q. How large is this window? A. I can't say, but its a pretty big window; it works on two swivels on a half.

JAMES McCORMACK, being duly sworn according to law, upon his oath, in his own behalf, testifies as follows:

20 Direct Examination by Mr. Weinberger:

Q. Where do you live? A. 55 Hamilton Avenue.

Q. And you have lived in Paterson how long? A. All my life.

Q. And you have been connected with the police department how long? A. Nineteen years this June.

Q. Were you detailed to the brewery on the 6th of January, 1926, at 17 Ann Street? A. Yes; I was.

30

Q. With whom? A. Officer Kohn.

Q. And by whom? A. Captain Murner.

Q. What time did you get to the premises? A. About five or ten minutes past one.

Q. And, when did you leave? A. Three o'clock.

Q. Did you have occasion to see what was in there when you got there? A. Yes.

Q. What have you to say as to any articles being removed from there from the time you got there to the time that you left? A. Nothing was taken.

Q. Was the burner there when you got there? A. I don't know. I never saw a burner in my life. 10

Q. Were the different articles on Exhibits P-1, P-2, P-3 and P-4 there when you got there? A. Yes.

Q. Were they there when you left? A. They were.

Q. Did you give permission to anybody to take anything out of there? A. I did not.

Q. Were you there when Detective Alber got there? A. Yes, sir. 20

Q. Were you there when Van Noort got there? A. Yes; they both came there together.

Q. Did they go into the premises? A. Yes, they went inside.

Q. Who called Van Noort in? A. Alber.

Q. Is Alber your superior or is he an officer of equal grade? A. He os sergeant of police.

Q. Is that superior or your equal or superior officer? A. Superior officer.

Q. What have you to say with regard to the right of your superior officer when detailed on duty? A. He is always our boss, any time, any place. 30

Q. And tells you to go or stay? A. Absolutely.

Q. Can he get access in and to places and go in with witnessse or others if he wished to? A. I don't undetrsand you.

Q. Can he get access in and to places and go in with witnesses or others if he wished to? A. Absolutely.

Q. And that has been your practice since you have been on the force? A. Yes, ever since I have been on.

Q. On this particular day, it was Alber who
10 called Van Noort in? A. Yes.

Q. And Alber was your superior? A. Yes.

Q. How long were they in the premises? A. About twenty minutes—fifteen or twenty minutes.

Q. Was officer Kovach there? A. Yes; he was there.

Q. Officer Vogel there? A. Yes, he was there.

Q. Officer Alexander there? A. Yes.

Q. Did anybody remove anything from there from the time you got there to the time you left? A.
20 They did not.

Q. Did you take any hops, sugar or anything out of there? A. No.

Q. Or permit anybody to take anything or have anybody take it for you? A. No, sir.

Q. Did you disobey any order given you by any superior officer that day? A. No.

Q. Did you know that any article had been brought in through the window or went out through the window that afternoon while there? A. No, I
30 do not.

Q. So far as taking care and watching the place is concerned, where is the only entrance you had to the place? A. At this "L" where we sat.

Q. Were you sitting there watching? A. Yes.

Q. And also observing it? A. Yes; I was going through there every once in a while.

Q. Aside from the officer and Van Noort, was

there any human being in that place that had no authority to be there? A. There was nobody in there only Van Noort.

Q. Was there a police officer in the room proper, from time to time you got there to the time you left, —a police officer or detective? A. Every minute.

Q. And was there one there all the time while Van Noort was in the place? A. Yes, sir. 10

Q. When did officer Perry relieve you? A. About three o'clock.

Q. When you left were all the things there? A. Yes, sir.

Q. Who took you home? A. Officer Rafferty.

Q. In what? A. A Ford machine.

Q. Connected with the police department? A. Yes, sir.

Q. Policeman? A. Yes, sir.

Q. And a police machine? A. Yes. 20

Q. That car was not used to remove any of the sugar, was it? A. No.

Cross-Examination by Mr. Spitz:

Q. Were you detailed to go to 17 Ann Street on this day in question? A. Yes.

Q. By whom? A. Captain Murner.

Q. What were his instructions to you? A. To let nobody in there. 30

Q. And he also told you to see that nothing went out? A. He did.

Q. When you got down there, what did you do? A. I went in and looked the place over and walked around and then came back into this "L" place; my feet got ringing wet walking through it,—that's the reason I was up in the "L".

Q. What did you do in the "L"? A. Sit down.

Q. Did you notice the window open in the rear when you got there? A. Yes, a little bit.

Q. You didn't close it? A. No.

Q. And you took the position in the "L" where you had a good view of the whole room? A. Half of it.

Q. Only half of it? A. Yes.

10 Q. You don't know if anyone removed anything from there or not? A. I do not.

Q. You don't know if anyone came in there or not through the window? A. I didn't see anybody.

Q. They could have come in without you seeing them? A. They could have come in.

Q. How long have you been on the force? A. Nineteen years this June.

Q. Is it your understanding that if a Captain 20 gives you instructions that a Sergeant off duty can change those instructions? A. Absolutely if the Captain is not there, he is the boss. That is the rule

Q. Without telling you that the instructions came from he Captain? A. Yes, sir.

Q. Is that right? A. Absolutely.

Q. You knew that Sergeant Alber was not on duty? A. I didn't know anything about it; I consider him on duty all the time.

Q. That your understanding, is it? A. Al- 30 ways subject to duty at any time.

Q. And you consider yourself always on duty? A. Yes, always.

Q Why did you not station yourself in a position there where you could see the whole room? A. That is the only way in,—I didn't think anybody would fly in the window. It was all wet in there.

Q. You say your instructions were to allow no one to enter,—why did you allow Van Noort to enter? A. He came in there with Sergeant Alber.

Q. Van Noort came in there with him? A. Yes; Alber called him in.

Q. From where? A. From the run-way there.

Q. Where was he standing? A. I guess he was on the street. 10

Q. Where was Sergeant Alber? A. He was in this "L", talking to us, and he walked out and called Van Noort in.

Q. Alber was in the "L" and came out and called Van Noort and then went in again? A. Yes; he stuck his head out, and Van Noort was standing there and Alber called him in.

Q. How long did you stay in that "L"? A. On and off about an hour. I took two walks up and down the floor until I got my feet all wet, and 20 then I went and sat down in the "L".

Q. Then you stayed in the "L"? A. I did.

By Commissioner Fitzmaurice:

Q. When you took those two walks up and down, was everything in perfect order? A. Yes, as far as I could see.

Q. Was that burner there? A. I don't know what one is. I never saw one in my life.

30

ROBERT J. ALEXANDER, a witness produced on behalf of the defendants, being duly sworn according to law, upon his oath, testified as follows:

Direct Examination by Mr. Weinberger:

Q. You are connected with the Paterson Police Department and have been for how long? A. Going on eighteen years.

Q. You have lived in Paterson how long? A. Nearly all my life.

Q. Just about how long is that? A. I guess about 40 years.

Q. Were you in the service of the department on the 6th of January, 1926? A. Yes, sir.

Q. Did you have occasion to go to this Brewery
10 that day? A. Yes, sir; I went there,—I was doing traffice duty at Paterson and Van Houten Streets, and while walking on my post, I met officer Vogel and he said "I hear they got a new Brewery down Ann Street, what do you say if we go down and look at it," and so we went down and went in; and I can enumerate to you the things with a bird's eye view that I got of everything as it was when I was there, and if you want me to, I will.

20 Q. Well, let's have the bird's eye view that you got? A. Well, I walked into the inside through a small gate, and there was a place here like,—about three alcoves or garages; in the far end was the vats, two marked empty on them; it was all wet in there and you had to be careful where you walked. I went down towards the end of the building, and in that alcove there as a bag and Charlie says "Look at the hops." There was the old pump handle alongside I would say a brick
30 furnace, I think, it looked to be about that big (indicating) with a handle on, I don't know what it was,—and along side here was three great big barrels, two barrels laying down. We only stayed in there about three minutes, because I had to report in, and I looked at my watch and I said to myself I guess I better be going.

Q. What time was that? A. It was fifteen minutes past when I got out. I got in there at just twelve minutes past, and I reported at Straight and River Streets at twenty minutes past two.

Q. Anybody else there while you were there? A. Officers McCormack and Kuhn.

Q. Anybody else? A. Officers Kovack says he came in as I went out. 10

Q. The fact is, that you left? A. Yes, I left.

Q. Come back again after that? A. No, sir.

Q. And that is the last you saw of that place? A. Yes.

Q. Was there any sugar there? A. Yes; there was some bags, but it was marked in red right alongside of the hops,—more than two or three, I know. I seen the coil in that square box,—they say that was a cooler. 20

Q. You didn't take any of the sugar or hops, did you? A. No, sir.

Cross Examination by Mr. Spitz:

Q. What time did you leave there? A. 15 minutes past two.

Q. That is, 17 Ann Street? A. Yes.

30

ARCHIE VOGEL, a witness produced on behalf of the defendants, being duly sworn according to law, upon his oath, testified as follows:

Direct Examination by Mr. Weinberger:

Q. You are connected with the Police Department? A. Yes.

Q. And have been how long? A. Three years.

Q. On the 6th day of January, 1926, were you

engaged in work of the department? A. Yes, sir.

Q. On duty? A. Yes.

Q. Did you go down to this place at 17 Ann Street? A. As a spectator.

Q. What time? A. I got there about twelve minutes after two.

Q. With whom? A. Officer Alexander.

10 Q. The gentleman who just preceded you on the stand? A. Yes.

Q. See what was in that Brewery? A. Yes, different things.

Q. Were officers Kuhn and McCormack there? A. Yes.

Q. On duty at the time? A. Yes.

Q. Did you take anything out of there? A. No, sir.

Q. Sure about that? A. Positive.

20 Q. See any sugar there? A. Some stuff in bags,—I don't know what was in them.

Q. See any hops? A. Yes.

Q. Empty or full barrels? A. Yes.

Q. You didn't remove anything? A. Nothing.

Q. Did you help anybody take anything out of the window? A. No.

Q. When did you leave? A. About eighteen minutes after two.

30 Q. Did you leave before officer Alexander or after? A. After.

Q. How long after? A. Two or three minutes.

Q. Anybody else come there in the meantime? A. Not while I was in there.

No Cross Examination.

REBUTTAL

JOHN TRACY, being duly sworn according to law, upon his oath, on rebuttal, on behalf of the City, testified as follows:

Direct Examination by Mr. Spitz:

Q. You are Chief of Police of the City of Paterson? A. Yes; I am. 10

Q. Now, as to the rules of the Police Department,—if a captain details an officer to a particular charge and puts that officer in charge, does that officer according to the rules of the department take orders from the sergeant who happens to be there and not in charge?

Mr. Weinberger—That is objected to, as it is clearly a legal question and should not be subjected to any interpretation. 20

Commissioner Tilt—It don't make any difference. Suppose the Chief of Police comes down and tells an officer to do something he should not do, is he obliged to obey the order of the Chief of Police?

Mr. Weinberger—The point the Commissioner makes is a proper one. I don't think it is proper to ask a Judge what the law is on the subject of a law that is written some place and which is subject to interpretation. I can bring twenty-nine police officers here and ask their opinion as to the law and each might have a different opinion or interpretation. The question asked is a question predicated upon a legal interpretation of 30

the Board and not an individual. That is the only reason why I object.

Commissioner Tilt—This is a summary hearing, and the testimony of the Chief will have just as much weight and be given as much credence as the testimony of your witnesses. We'll allow it.

10 Exception granted.

A. When a man is detailed to execute police duties, he has no right to change them. No sergeant has a right to change that order unless some emergency arises or may crop up; at a time when the superior officer don't know anything about, the sergeant is supposed to use his own good judgment and discretion; but an officer or a sergeant has no right to change any orders given him
20 by his superior, unless directed to do so by the superior officer in charge. Unless it is an emergency that might happen to arise, as I have stated.

Cross Examination by Mr. Weinberger:

Q. Why, Chief, you don't mean to say that a superior officer can't dictate to an inferior officer should he in his judgment think it necessary to do so? A. Some emergency may crop up when it
30 may be necessary to issue orders.

Q. If the superior officer should be of the opinion that somebody might give some very valuable aid and assistance in detecting the perpetration of a crime, that would permit him, would it not, the right to go into the premises? A. That would give the sergeant in charge power to change the

order and notify the superior officer of his judgment.

By Mr. Spitz:

Q. You say sergeant in charge. A. I mean that if something should crop up that the superior officer did not know anything about, when the sergeant might say this is the best thing to do or this is the best way to do this, thereby taking upon himself all responsibility, and then notify the superior officer in charge.

Q. Is it not a fact that all sergeants are considered always on duty? A. Yes.

Q. And so it is with a police officer,—he is presumed to be on duty at all times? A. Twenty-four hours a day.

Q. And if a sergeant in his judgment should feel that the ends of justice might be served in requiring him to go about the premises for the purpose of detecting the reason for the crime, he has a right to dictate to an inferior officer as to what he should do where he has no knowledge of another man's orders? A. He has no right to override another man's orders, unless it is really important and in case of an emergency,—real emergency.

Q. What the emergency is, depends upon the individual's judgment? A. Yes; he is responsible for his own actions and duty.

By Commissioner Fitzmaurice:

Q. Do you understand that the Police Commission is responsible for the administration of police affairs? A. Yes.

Q. You also understand that all police matters of an extraordinary nature coming under your jurisdiction you are supposed to report to the Board of Police Commissioners immediately? A. Yes, sir.

Q. Have you done that? A. Yes, sir; I went to Commissioner Christie and reported the circumstances to him. It is the same as reporting it to the Board, that is my impression. Maybe the Board would not be in operation or session for a week or two after a charge is reported. I notified Commissioner Christie, the Chairman of the Police Committee.

Q. Well, I feel as though you should notify me too as a member of that Board. A. Well, if we have not had a meeting since this thing occurred, there's a lot of time yet to notify you. Tomorrow night will be the first opportunity I have had to notify the Board.

Q. That would not comply with the law. The law says notify immediately the Board. A. There is no opportunity to notify the Board until the Board is in operation.

Q. You knew I was in town, didn't you? A. Yes.

Q. You could have gotten me if you had tried? A. I generally deal directly with the Commissioner of Police.

Q. The rule says notify the Board? A. Well, it isn't too late to notify the Board yet.

Q. That wouldn't be immediately. The rule says to immediately notify the Board and to report on it. A. (No reply.)

Q. Who was in charge of this investigation, Chief? A. Sergeant Lord.

Q. And he is the only one that should have given orders? A. No; he was in charge of the investigation end of it. It was officer Kovack that discovered the Brewery.

Q. Who was in charge of the investigation on the sixth of January? A. Sergeant Lord.

Q. And only he? A. Yes; there were others with him that assisted him,—Detectives Bland and Ayres. 10

Q. As many as were with him had authority to— A. They were under orders, and the men with him had no authority. Sergeant Lord was boss and the superior over the other detectives, because he is the sergeant and they only detectives.

Q. Was Alber in the same grade as the other detectives? A. Yes, but in a different branch.

Q. Is he in the same grade? A. He is a sergeant. 20

Q. That means an officer superior to McCormack and Kuhn? A. Yes.

Q. And one in his position can tell those officers what to do if in his judgment he thinks it best, but he must assume all responsibility? A. Yes, he assumes all responsibility.

Q. It is up to him to answer for his actions? A. Yes.

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Hearing Closed.

My Mr. Weinberger:

I would like now to move for a dismissal of the complaint against these officers, and ask for an acquittal on the ground that the question that I am

now going to raise is well settled, the Supreme Court having pronounced what the law is, and this Board has got no other alternative but to accept its decision and to acquit these defendants. Now, gentlemen, that is rather bold language to use, but nevertheless the Supreme Court, for which I have a very wholsome regard, has made the law very clear. I don't know of any other tribunal more competent, if you want to win a case when the law is with you.

The law is this: That where a police officer is up charged with a violation of an Ordinance or rule of the Department, the City is out of luck an the Board has no power to convict, unless the law or ordinance has been proven to have been violated. I am going to ask the Commissioners now by way of a friendly question,—What is the law or ordinance that has been violated? Have you got it before you? Is there any rule of the Police Department or any ordinance violated? I say there is not. I say the law goes further, and says not only must you prove that there is a law or rule violated, but you must prove that it was actually in force and effect when it was supposed to have been violated, and that it was then and there a violation on the part of the police officers to commit an offense against the laws here.

In the case of Kelly v. Bishop,—that was a case, just as you men are seated here,—the Commission tried that case and convicted a police officer, and there in that case the point was made and raised by Counsel that I am now making before you,—that the City failed to establish (1) that there was a rule, (2) what it was and (3) that it was in force and effect on the date it was alleged to have been

violated and that the officers were in fact guilty of its violation. The Supreme Court held in that case, in very plain and unmistakable language, that the failure to do that, as a matter of law, clearly entitled the police officer to a vindication and sets the judgment aside.

I don't want to take up a lot of time on legal questions. Commissioner Tilt has very properly referred to the fact that this is a summary proceeding or hearing, but the law says this,—it is not only a summary hearing, but a hearing which operates and demands the production of such proof in full was will justify a conviction.

(Counsel then quotes decision of Bergen, J., in the case of Kelly v. Bishop, 119 Atl. 6.)

This is the decision I am pleased to refer to, because I think it will end the trial here. I think that decision ends this case right here, in so far as the law is concerned; but I want to say this, Commissioners, and I say it with the greatest respect for the fact that it is a commendable duty on the part of the department to go into an investigation of this character; but, unfortunately, these things have a two edge effect. I want to say that in the case of the City of Clifton v. Batalle, a case in which we were the Attorneys, there a similar verdict was set aside by the Supreme Court,—in that case Counsel learned there was an error and consented to its being set aside, and that Police Officer is on the force today and is considered one of the best police officers of his grade within the County,—so sometimes charges help the police department and sometimes help the officers as well.

For the reasons I have stated, I ask for a dismissal.

Mr. Weinberger then summed up for the defendants.

Mr. Spitz then summed up for the City.

10 Upon motion duly made, seconded and carried, the Board of Police Commissioners then entered executive session for consideration of the evidence and to render its decision.

Returning from executive session, Commissioner Tilt spoke as follows:

"Officers Kuhn and McCormack:—You have been charged here before this Board with conduct unbecoming an officer, and the Board has consi-
20 dered the case and the testimony that has been offered, and have come to the conclusion that your conduct at the time charged was not that of an officer. You were sent there by the authority to guard this property. Now, it did not make any difference and should not have made any difference to you or each of you or to any other officer what you might think about the prohibition law or its enforcement; that is not your concern or my concern or this Board's concern.

30 The facts are, that you were sent down there by a superior officer to guard certain property and to see to it that that property did not get away from you. The facts show that you did not perform your duty, much to the regret of this Board, and this Board has come to the conclusion that they can do no other under the circumstances and proof but to find you guilty,—and you, officer

Kuhn, and you, officer McCormack, are each found guilty, and the sentence is that each of you be dismissed from the force, expelled as of January 7th."

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EXHIBIT X-1

January 19th, 1926

January 6th, 1926.

Statement of Sergeant William H. Lord, Dect. Bland and Eyres, relative to a raid on Brewery at 17 Ann St., Paterson, N. J.

Following is a list of the articles found by us at the above address and left there under Police Guard:

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1½ bales of hops, 6 bags of sugar, 7 barrels of Malt syrup, 9 vats, 75 ale barrels, 7 barrels of oil, 1 pump and handle, 50 feet of hose, 1 oil burner and motor, 2 six foot ladders, 30 kegs, 3 five gal. cans, 2 barrel skids, 2 gav. pails, 2 large funnels, 1 copper beer cooler, 1 copper strainer, 1 galvanized brew tank, 50 feet of 4 in. hose, 2 skimmers, 1 ice chopper, 13 copper fittings, 3 pieces of ½ in. pipe, 1 pair boots, 1 pair of clogs, 4 pair of overalls, 1 iron vat stand, 2 Exit wires, 1 pair of ice tongs, 19 pieces of hooks and roods, 1 coal chisel, 1 brace and bit, 1 cooper's draw knife, 4 copper hammers, 1 mason trowel.

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Respectfully submitted,
Sergt. W. H. Lord.

Eyres & Bland.)

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AN ORDINANCE

An ordinance to establish, regulate and control a day and night police; to regulate and define the manner of their appointment and removal, their duties and compensation.

The Board of Fire and Police Commissioners of the City of Paterson do ordain as follows:

1. The Police Department of the city of Paterson shall consist of one Chief of Police, four Captains of Police, four Liutenants of Police, one 10
tains of Police, four Lieutenants of Police, one
Master Mechanic, one Matron, one Janitor-engineer, and as many Sergeants of Police, Patrolmen, such other employes as the Board of Fire and Police Commission may from time to time appoint.

2. The said Board of Fire and Police Commissioners shall have power to designate one member of the Department to act as Secretary of the Chief, one member of said Department to act as clerk of the Department and property custodian, one mem- 20
ber as Photographer, one member as Bertillion and Finger Print Expert and shall also designate one of the Captains of Police to command the detective bureau of said Police Department and while acting in such capacity, said Captain shall be known as "Captain of Detectives."

3. All appointments shall be chosen from a list prepared by the Board of Civil Service Commissioners of the State of New Jersey after competi- 30
tive examination and with special reference to the fitnes of the person so appointed and before any permanent appointments are made those desiring to be appointed shall be required to submit them-

selves to such an examination as may be demanded by the State Board of Civil Service Commissioners of the State of New Jersey.

4. The annual salary of all officers, members and employes of the Police Department shall be classified and fixed by the State Board of Civil Service Commissioners with the approval of the Board of Fire and Police Commissioners and the Board of Finance of the City of Paterson, New Jersey. In no case, however, shall the annual salary of any officer, member or employe of the said Police Department be less than the standardization of salaries fixed by the State Board of Civil Service Commissioners and approved by the Board of Fire and Police Commissioners and the Board of Finance of the City of Paterson, New Jersey, as of January 1st, 1922.

5. The Chief of Police shall be the Executive Officer of the Department, subject to such rules, regulations, and orders as may be prescribed by the Board of Fire and Police Commissioners and it shall be his duty to prepare a payroll semi-monthly showing the number of employes of the Police Department, and the amount due to each, which payroll shall be submitted to the Board of Fire and Police Commissioners for certification as to its correctness. Each payroll shall show and contain the rank of each person, the time for which each person is entitled for payment, the amount of the payroll, and must be certified to by the Chief of Police. The salary of every member and employe of the Police Department shall be due and payable on the first and sixteenth of every month.

6. The Senior or Ranking Captain of Police shall, in the absence of the Chief, temporarily or

otherwise, perform all the duties of the said Chief.

7. The Captain of Detectives shall be vested with the supervision and control of the Detective Bureau, subject at all times to the orders of the Chief of Police and Board of Fire and Police Commissioners.

8. If any member of the Police Force shall absent himself or herself from duty on account of sickness, such member shall be allowed and paid only one-half of his or her regular salary during such absence, unless injured or taken ill in the performance of his or her duty, in which case such member shall be entitled to full pay; provided further, that the Chief of Police shall have power to allow full pay to such members of the Department as may be absent in attendance at the funerals of the following named relatives: One day's absence and full pay while attending the funeral of an uncle, aunt, brother-in-law, sister-in-law, nephew, niece, grandfather, grandmother, father-in-law or mother-in-law; and in case of the death of a wife, husband, child, father or mother, brother or sister, absence and full pay may be allowed from the time of death to the day following the funeral of such deceased relative.

9. The headquarters of the Police Department are hereby established in the Police Station situate on Washington Street in the City of Paterson, which shall be open for the transaction of business at all hours of the day or night, including Sundays. The Board of Fire and Police Commissioners may, at its discretion, establish and maintain District Precinct Police Stations, when in the judgment of said Board such District Precinct Police Stations are necessary for the enforcement of

the laws of the State of New Jersey and the Ordinances of the City of Paterson and for the better protection of the City and its inhabitants.

10. It shall be the duty of the Chief of Police to cause the public peace to be preserved and see that all the laws and ordinances relating thereto are properly enforced; he shall faithfully and promptly obey and cause all the men under him to obey, all the rules, regulations and orders from time to time prescribed by the Board of Fire and Police Commissioners; he shall (in subordination to the Mayor) in case of tumult, riot, insurrection or threatenings thereof, take command of the police force in person and direct their movements and operations in discharge of their respective duties.

11. To be eligible to appointment in the Police Department a man must not be less than twenty-one or more than thirty years of age, a resident of the City of Paterson at least one year, a citizen of the United States, of good moral character and able to read and write the English Language understandingly. He must be at least five feet eight inches in height and weigh not less than one hundred and forty pounds. He shall be in good health, sound in body and mind, and certified to by the State Board of Civil Service Commissioners, City Physician and Assistant City Physician that he is physically capable of performing the duties required of him. When any man has been appointed to the Police Department he shall, before being sworn into office, make oath that he has truthfully answered all the questions of the State Board of Civil Service Commissioners, the City Physician and Assistant City Physician, as in this section provided.

12. The City Physician and the Assistant City Physician shall constitute and be known as the Police Examining Board. It shall be the duty of the said Board to carefully examine the educational, mental, moral and physical fitness of any person recommended for examination provided such person has first been certified for appointment by the State Board of Civil Service Commissioners. A certificate signed by the Examining Board if the candidate is a person of educational, mental, moral and physical capacity to discharge the duties of the position for which he has been certified, shall be considered and taken by the Board of Fire and Police Commissioners as sufficient evidence of such examination.

13. Each and every policeman shall make complaint before the Recorder of every person known to him to have violated any of the Laws of the United States, the State of New Jersey or Ordinances of the City, so that the Recorder may order the issuance of either a warrant or summons for the appearance of the person charged with the violation.

14. Any member of the Police Department may be expelled by a majority vote of the Board of Fire and Police Commissioners against whom any of the following charges are substantiated, namely:

1.—Intoxication or under the influence of any drug or other compound while on or off duty.

2—Wilful disobedience of orders.

3—Indecent, profane or harsh language.

4—Disrespect to a superior officer.

5—Unnecessary violence to a prisoner.

6—Absence without leave, sleeping on duty, absence from post of duty without excuse, or not properly patrolling his beat.

7—Debts, contracted while on the force.

8—Immorality, indecency or lewdness.

9.—Incapacity, either mental or physical, lack of energy or gross ignorance of the laws and regulations of the Department.

10.—Visiting except on police business any gambling house, pool-room or house of ill fame, or visiting while in uniform or on duty, except on police business any saloon or liquor store.

11—Violation of any Criminal Law.

12—For making known any proposed action or movement of the Force or contents of any order, other than to persons immediately concerned in their execution.

13—Conduct unbecoming an officer and a gentleman.

14—Conduct subversive of good order and the discipline of the force.

15—Publicly commenting on the official action of a superior officer.

16—Failure to report a known violation of law or of the Ordinances of the City, or accepting a bribe or favor as a consideration either for the performance or non-performance of his duty.

17—Visiting any place of amusement while in uniform except on police business.

18—Failure to attend drill or the school of instruction at the time fixed or whenever ordered.

19—Swearing falsely in application for appointment to the Force or to such other papers as require of him an affidavit, as provided for in Section 11 of this Ordinance.

20—Soliciting anyone to intercede with the Chief, the Board of Fire and Police Commissioners, or any Superior Offiecr in relation to promotions, changing of any beats, disposition of pending charges or any findings of a trial before the Board, or for refusing to do duty, or evading duty of any kind whenever necessity requires, whether on patrol or elsewhere, and whether in uniform or not.

15. When any member of the Police Department is suspended from office and afterwards reinstated, he shall not receive any pay for the period of such suspension, unless otherwise ordered by the Board of Fire and Police Commissioners.

16—All charges against members of the Police Department shall be thoroughly examined by the Board of Fire and Police Commissioners, and upon any member of said Department being convicted by the said Board of any violation of any of the rules, regulations, or orders of the Department, the said Board may, in lieu of dismissal from the Department impose such penalty as in the judgment of the Board is warranted by the character of the offense.

17—The Board of Fire and Police Commissioners shall make such rules and regulations concerning the conduct and duties of the officers and men, the kinds of uniform and insignia to be worn by them, and concerning such other matters as may be necessary for the proper regulation of the Police Department and when the same have been adopted by the said Board they shall be known as the "Rules and Regulations for the Government of the Police Department of the City of Paterson,

New Jersey," and shall be binding upon each member and employe of the Department.

18—Each member of the Police Department shall be presented with a printed copy of the Rules and Regulations of the Police Department; such rules shall show what his duty shall be on all occasions, or upon his being apprised of the violation of the provisions of any of the Ordinances of the City, and also what particular provision of any Ordinance or Ordinances it is his duty to see enforced, and any neglect, by any member of the Police Department, to carry out each and every rule and regulation or order as aforesaid, shall be held to be sufficient cause for his dismissal from the Department.

19.—An Ordinance entitled "An Ordinance to establish, regulate and control a day and night police, to regulate and define the manner of their appointment and removal, their duties and compensation," passed August 16, 1912, approved August 20, 1912, and the several supplements thereto and all ordinances and parts of ordinances inconsistent with the provisions of this Ordinance be and the same are hereby repealed.

20.—In case, for any reason any section or any provision of this Ordinance shall be questioned in any Court and shall be held unconstitutional or invalid, the same shall not be held to affect any other section or provision of this Ordinance.

21.—This Ordinance will take effect immediately.

Passed, December 29th, 1921.

Wm. L. Dill,
President of the Board of Fire and
Police Commissioners.

Ordinance

Aproved, December 31, 1921.

Frank J. Van Noort,
Mayor City of Paterson.

Attest:

Frank Mobius,
Clerk to the Board of Fire and
Police Commissioners.

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(Filed January 30, 1926.)

NEW JERSEY SUPREME COURT.

Anthony V. Kohn, Prosecutor, vs. Edgar M. Tilt, John A. Fitzmaurice, William E. Eaton, George E. Christie, constituting the Board of Police Commissioners of the City of Paterson, in the County of Passaic, John M. Tracey, Chief of Police of the City of Paterson and Meyer Jaffe, Clerk and Secretary of the said Board of Police Comissioners, Defendants.	On Certiorari.

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REASONS

The said prosecutor by Weinberger & Weinberger, his attorneys, comes and prays that the findings, proceedings and judgment of the Board of Police Commissioners, of the City of Paterson, in the County of Passaic, made and entered on the 25th day of January, 1926, whereby Anthony V. Kohn, the prosecutor, was expelled from the police force of the said City of Paterson, may be set aside and for nothing holden, for the following reasons:

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1. Because the rules and regulations, governing the said police force, if any such rules and

regulations were in force, were not proved before the said Board of Police Commissioners, on the trial of the said prosecutor, and were not offered in evidence.

2. Because the complaint and charges made against the Prosecutor, and upon which he was tried, were not offered in evidence at the said trial.

3. Because there was no legal judgment entered against said Prosecutor.

4. That the alleged findings of the said Board of Police Commissioners were illegal, and contrary to law, in that they fail specifically to allege any legal violation. 10

5. That there was no lawful evidence adduced at the hearing before the Board of Police Commissioners, upon which to base a conviction, and that the prosecutor was dismissed from the police force without any reasons whatever, and not in accordance with law.

6. That no evidence was adduced showing the existence of any rules or regulations which he had violated. 20

7.—That there was a failure of proof of the material matter upon which the alleged conviction is sought to be predicated.

8. There was no credible or reliable evidence upon which to predicate the conviction.

9. That the said prosecutor has been served with a notice, removing him from the Police force, and that said proceedings are wholly illegal and not supported by a legal judgment. 30

10. That the notice of dismissal is not predicated upon a legal and valid judgment.

11. That there was no legal judgment entered against the said prosecutor, and therefore, he was expelled from the Police Force of the City of Paterson, illegally, and that the said conviction was in divers other respects, illegal and contrary to law.

Weinberger & Weinberger,
Attorneys of Prosecutor.

(Same reasons filed in the case of McCormack vs. Tilt et al.)

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NEW JERSEY SUPREME COURT.

Anthony V. Kohn,
Prosecutor,
vs.
Edgar M. Tilt, John A. Fitzmaurice, William E. Eaton, George E. Christie, constituting the Board of Police Commissioners of the City of Paterson, in the County of Passaic, John M. Tracey, Chief of Police of the City of Paterson and Meyer Jaffe, Clerk and Secretary of the said Board of Police Comissioners,
Defendants.

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On Certiorari.

James A. McCormick,
Prosecutor,
vs.
Edgar M. Tilt, John A. Fitzmaurice, William E. Eaton, George E. Christie, constituting the Board of Police Commissioners of the City of Paterson, in the County of Passaic, John M. Tracey, Chief of Police of the City of Paterson and Meyer Jaffe, Clerk and Secretary of the said Board of Police Comissioners,
Defendants.

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STIPULATION

It is hereby stipulated and agreed by and between counsel for the prosecutors, and counsel for the de-

fendants, that the above entitled causes be argued before a single Justice, pursuant to the statute.

Weinberger & Weinberger,
Attorneys of Prosecutors.
Benjamin J. Spitz,
Attorney of Defendants.

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(Filed April 8, 1926.)

NEW JERSEY SUPREME COURT.

Anthony V. Kohn, Prosecutor, vs. Edgar M. Tilt, John A. Fitzmaurice, William E. Eaton, George E. Christie, constituting the Board of Police Commissioners of the City of Paterson, in the County of Passaic, John M. Tracey, Chief of Police of the City of Paterson, and Meyer Jaffe, Clerk and Secretary of the said Board of Police Commissioners. Respondents.	On Certiorari.

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ORDER FOR REVERSAL.

This matter coming on to be heard on the Third day of April, 1926, before the Honorable Charles C. Black, Justice of the New Jersey Supreme Court, at the Court House, in the City of Paterson, New Jersey, pursuant to a written stipulation entered into by and between Benjamin J. Spitz, of Counsel with respondents and Joseph J. Weinberger and Harry H. Weinberger, of Counsel with prosecutors, and the court having duly heard the arguments of respective counsel and having duly considered all the evidence returned with the writ,

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and being satisfied that the said conviction of the Prosecutor, Anthony V. Kohn, was erroneously entered in the said cause because of the insufficiency of the evidence, and the evidence clearly showing that the decision of the Board of Police and Fire Commisioners of the City of Paterson was not in acordance with the evidence.

It is, on this 3rd day of April, A. D., 1926, ordered that all proceedings had wherein Anthony V. Kohn was found guilty of having violated certain rules and regulations of the Police Department, and especially an order dismissing the prosecutor from the Police force, which order was made on the Twenty-fifth day of January, 1926, to take effect as of the Seventh day of January, 1926, for having violated certain provisions of a certain ordinance and certain Police regulations, is hereby set aside and for nothing holden, and declared null and void; and

It is further ordered that all proceedings taken with respect to the trial, conviction and dismissal of the said Police Officer be and the same are hereby set aside, for nothing holden and declared null and void.

Charles C. Black,
Justice.

(Same order of reversal filed in the case of McCormack vs. Tilt et al.)

(Filed April 19, 1926.)

NEW JERSEY SUPREME COURT.

Anthony V. Kohn, Prosecutor-Appellee, vs. Edgar M. Tilt, John A. Fitzmaurice, William E. Eaton, George E. Christie, constituting the Board of Police Commissioners of the City of Paterson, in the County of Passaic, John M. Tracey, Chief of Police of the City of Paterson and Meyer Jaffe, Clerk and Secretary of the said Board of Police Commissioners. Respondents-Appellants.	On Certiorari.

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NOTICE OF APPEAL.

To Weinberger & Weinberger,
Attorneys of Prosecutor-Appellee:

Please take notice that the Respondents in the above stated proceedings appeal from the whole of the judgment entered in this cause to the Court of Errors and Appeals.

Benjamin J. Spitz,
Attorney of Respondents-Appellants.

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Dated: April 15, 1926.

(Same Notice of Appeal filed in the case of McCormack vs. Tilt et al.)

Service of a copy of the within notice acknowledged this.....day of April 1926.

Weinberger & Weinberger,
Attorneys for and Counsel with
Prosecutor-Appellee.

(Same acknowledgment of services filed in the case of McCormack vs. Tilt et al.)

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Anthony V. Kohn, Prosecutor-Appellee, vs. Edgar M. Tilt et als., Respondents-Appellants.	On Certiorari on Appeal from the Supreme Court.

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GROUNDS OF APPEAL.

The Respondents-Appellants state the following grounds of appeal in this cause:

1. Because the Supreme Court erred in reversing the action of the respondents-appellants, The Board of Fire & Police Commissioners of the City of Paterson, in dismissing the prosecutor-appellee from the police force of the City of Paterson.

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Benjamin J. Spitz,
Attorney of and Counsel for
Respondents-Appellants.

(Same Grounds of Appeal filed in the case of McCormack vs. Tilt et al.)

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Anthony V. Kohn, Prosecutor-Appellee, vs. Edgar M. Tilt et als., Respondents-Appellants.	On Appeal.

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STIPULATION.

It is hereby stipulated and agreed by and between Weinberger & Weinberger, Attorneys of and Counsel for the Prosecutor-Appellee, and Benjamin J. Spitz, Attorney of and Counsel for the Respondents-Appellants, that the case of James A. McCormack, Prosecutor-Appellee, vs. Edgar M. Tilt, et als., Respondents-Appellants, the parties therein being represented by the Counsel signing this Stipulation, and the above entitled cause be submitted and argued before the Court of Errors and Appeals together, and that one record and State of Case shall apply to both causes.

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Weinberger & Weinberger,
Attorneys of and Counsel for
Prosecutor-Appellee.
Benjamin J. Spitz,
Attorney of and Counsel for
Respondents-Appellants.

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New Jersey Court of Errors and Appeals

ANTHONY V. KOHN,
Prosecutor-Appellee,

vs.

Edgar M. Tilt, John A. Fitzmaurice, William E. Eaton, George E. Christie, constituting the Board of Police Commissioners of the City of Paterson, in the County of Passaic, John M. Tracey, Chief of Police of the City of Paterson and Meyer Jaffe, Clerk and Secretary of the said Board of Police Commissioners,
Defendants-Appellants.

JAMES A. MCCORMICK,
Prosecutor-Appellee,

vs.

Edgar M. Tilt, John A. Fitzmaurice, William E. Eaton, George E. Christie, constituting the Board of Police Commissioners of the City of Paterson, in the County of Passaic, John M. Tracey, Chief of Police of the City of Paterson and Meyer Jaffe, Clerk and Secretary of the said Board of Police Commissioners,
Defendants-Appellants.

On Appeal from the Supreme Court.

Brief of Prosecutors-Appellees.

Statement of Facts.

This is an appeal from an order made by Justice Black, sitting alone, pursuant to the statute sustaining a writ of certiorari to review the dis-

missal of the defendants-appellants from the Police Department of the City of Paterson. Reversal was induced by a finding that the evidence on which the prosecutors-appellees (hereinafter referred to as the appellees), was insufficient to warrant a dismissal, and the decision was against the evidence (p. 114). Defendants had been members of the Police Department of the City of Paterson for nineteen years and had enjoyed excellent reputations.

Now, on Jan. 6, 1926, a brewery located at No. 17 Ann Street, in the City of Paterson, had been raided by the Police Department. Reserve Officers Kohn and McCormick were detailed to guard the property. They were assigned to duty at five minutes to one (p. 72). They were detailed to the alleged brewery. At 3.00 o'clock they were relieved from duty by Officer Perry. Subsequently it was discovered that certain articles had disappeared from the brewery. Thereupon the Chief of Police of Paterson made complaints against the defendants, charging them with violating sub-divisions 2 and 14 of Section 14 of the Ordinance *established by the Board of Fire and Police Commissioners of Paterson,* (pp. 2 and 3), each defendant being charged as follows:

> "1. He did violate paragraph two of section fourteen of said ordinance in that he failed to protect properly certain hops, sugar, pumps, burners and other contents of the building at No. 17 Ann Street, and allowed same to be removed from said building, in willful disobedience of orders.
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> 2. He did violate paragraph 14 of section 14 in that he was guilty of conduct subversive of good order and the discipline of the

force, in that he did allow certain hops, sugar, pumps, burners and other contents of the building at No. 17 Ann Street to be removed from said building, in willful disobedience of orders."

Defendants pleaded not guilty to the charges. On January 26th, 1926, after trial before the Board of Fire and Police Commissioners, Paterson, the defendants were found guilty and were dismissed from the Police Force in an alleged judgment by the Board expressed by Commissioner Tilt, the President thereof, as follows:

"Officers Kuhn and McCormack:—You have been charged here before this Board *with conduct unbecoming an officer,* and the Board has considered the case and the testimony that has been offered, and have come to the conclusion *that your conduct at the time charged was not that of an officer.* You were sent there by the authority to guard this property. Now, it did not make any difference and should not have made any difference to you or each of you or to any other officer what you might think about the prohibition law or its enforcement; that is not your concern or my concern or this Board's concern.

The facts are, that you were sent down there by a superior officer to guard certain property and to see to it that that property did not get away from you. The facts show that you did not perform your duty, much to the regret of this Board, and this Board has come to the conclusion that they can do no other under the circumstances and proof but to find you guilty,—and you, officer Kuhn, and you, officer McCormack, are each found guilty, and the sentence is that each of you be dismissed from the force, expelled as of January 7th."

Appellants, the Police and Fire Commission, now appeal from the order of Justice Black reversing the finding of the Board and argue in this Court the reasons (p. 108), urged by the appellees in the Court below.

POINT I.

There was no testimony which formed a *rational basis* for the judgment of the Board in rendering a decision against the appellees.

Before entering into a discussion of the evidence in this case, counsel desires to point out an elementary rule applicable in the Court of Errors & Appeals, that is, "Upon an appeal, (formerly taken by writs of error) brought to reverse the judgment of the Supreme Court rendered upon proceedings in certiorari, *the determination by the Supreme Court of questions of fact substantiated by competent testimony, is a finality.*"

> *Moran* v. *Jersey City,* (58 L. 653);
> *George* v. *Board of Excise,* (74 L. 816 and cases therein cited);
> *Suburban Land Co.* v. *Vailsburgh,* (68 L. 311).

Appeals bring for review before the Higher Court the judgments of inferior tribunals on matters of law only (cases cited).

Furthermore, as a strict matter of law, it does not seem to us that there is *any* evidence before this Court which it may legally consider.

The supplement to the Certiorari Act, P. L. 1914, p. 419 reads as follows:

> "In all cases of writs of certiorari hereafter allowed where the evidence given at the trial or proceeding under review shall have been reported stenographically by a competent stenographer designated by the court, official, tribunal, board or governing body before whom such trial or proceeding shall be had, the official or court making return to said writ shall, when requested so to do by the prosecutor or respondent in said writ, and upon being provided with a transcript of such evidence, at least five days prior to the return day of said writ, *which said transcript shall be duly certified by said stenographer,* certify and send to the reviewing court as the evidence given at said trial or proceeding as a part of the return to said writ, said transcript of evidence. * * *"

The transcript of the testimony annexed to the return and made a part of the state of the case does not bear any certificate by the stenographer. In criminal cases where the record on appeal must be authenticated by certificate of the trial judge, causes for reversal will not be considered without such authentication. *State* v. *Clark* (75 L. 473). Also in civil cases where a statute provides for certification of a transcript of proceedings and testimony to be made in a certain manner by a Judge, and a certificate is not made in the manner required, the record is defective. *Protective Finance Corporation* v. *Glass,* (98 L. 347). That case was an appeal from the District Court. A stenographer being present, the certificate of the stenographic transcript was made by a Judge other than the one who heard the cause. This

was held to be irregular and the record was not considered.

In the case at bar the appellants have not annexed any certificate to the testimony as required by the statute where they are relying upon the testimony taken at the hearing, to sustain the actions of the trial board.

However, should the Court incline to disregard these contentions for the appellees, we nevertheless, contend that a perusal of this "transcript" will show that the Supreme Court was correct in ruling that there was insufficient evidence justifying the dismissal of the appellees or either of them and that the decision of the board was not in accord with the evidence.

The evidence does not disclose a violation in accordance with the allegation of the complaint and is silent as to any act or acts on the part of the appellees or either of them, which would justify the conclusion reached by the commission.

A reference to the findings by the Board (pp. 96, 97) shows that there was no evidence to support the complaints because the finding was that the defendants were guilty of "conduct unbecoming an officer" and of "neglect of duty" whereas the charges were "conduct subversive of good order" and "wilful disobedience of orders."

Practically the sole testimony on which the commissioners rely for conviction was that of John Van Noort, whom counsel for the appellants characterize on page 10 of their brief, as the only eye-witness in the case.

His testimony was not worthy of belief, or sufficient to form a rational basis for a judgment of dismissal.

This of course, necessitates a reading of Van Noort's Testimony. We desire to lay particular stress on the fact that there is not a scintilla of credible evidence on the entire record which would justify or support the finding of the Commission.

Beginning at Page 30—(Van Noort):

> "Q. Do you know at this time what was taken out of the window?
> A. No.
> Q. Who was it that you saw putting something out of that window?
> A. I don't know who it was."

* * * * * * * *

> "Q. Can you describe him?
> A. No.
> Q. What was your conversation with the Chief about it?"

This was objected to, overruled and exception duly taken.

> "A. I told the Chief that the Officers did not know anything about anything going out of that brewery."

* * * * * * * *

At Page 30:

> "Q. Well, now let me see:—what prompted you to go there?
> A. I was across the street and I heard that the place was raided,—just curiosity, that's all.
> Q. Just curiosity, was it?
> A. Yes, just curiosity; I was interested in nothing else but that."

* * * * * * * *

At Page 37:

"And, as a matter of fact, you don't know what the object was that you saw going through the window?

A. No.

Q. And you were not interested enough to tell the officers that you saw anything go out?

A. No."

* * * * * * * *

At Page 37:

"Q. And yet you were a friend of theirs?

A. Yes.

Q. Knew them both before they were even in the police department?

A. Yes.

Q. And you considered them your good friends?

A. Yes.

Q. And yet you did not tell them that you saw anything travel out of the window there?

A. No.

Q. Why not?

A. Why not?

Q. Yes, why not?

A. Well, because I didn't think it was any of my business to tell them.

Q. Those two officers were your good friends, you say?

A. Yes.

Q. Van Noort, did you know who it was that was taking the object through that window?

A. I do not.

Q. Are you trying to shield him?

A. No."

At Page 38:

"Q. Are you trying to protect anybody in this thing?

A. No, I am not trying to protect anybody.

Q. Then why is it you didn't tell those two men that an object was being removed out of the premises, if you saw it going through the window in the hands of a stranger?

A. It was none of my business."

And then witness insists upon standing by this answer that it was none of his business.

At Page 38:

* * * * * * * *

"Q. Was it your business to talk to Chief Tracey after that?

A. Yes.

Q. Why?

A. Oh, no reason at all.

Q. If it was not your business to tell the officers what you saw going out of the window, why was it your business to talk to Chief Tracey?

A. Why was it?

Q. Yes.

A. Just because they were two friends of mine.

Q. What friends of yours?

A. McCormack and Kuhn.

Q. You wanted to help them?

A. Yes.

Q. If you wanted to help them why didn't you tell them about it when you saw this object going out of the window?

A. I had no business to tell them.

Q. What business did you have to see the Chief?

A. No business; maybe that is where I made a mistake by even speaking to him.

Q. Is that the truth now, Mr. Van Noort?

A. I hope so.

Q. Did you tell Chief Tracey that the goods would be back the next day?

A. No, that day.

Q. Was that your business?

A. No, no business.

Q. How did you know that the goods would be back the next day?

A. I didn't.

Q. Then why did you say to the Chief that you would get them back the next day?

A. I said I would see what I could do toward getting them back.

Q. How did you know that you could make a statement of that kind to the Chief?

A. I said I would see what I could do.

Q. About what?

A. About getting this burner back.

Q. Getting the burner back from who?

A. I don't know from who,—I would find out.

Q. Mr. Van Noort, is that the answer you want us to believe?

A. Yes."

* * * * * * * *

At Page 40:

"Q. Well, tell the Board then who you were going to see?

A. I was going to see——

Q. The fortune teller?

A. Yes, the fortune teller.

Q. Who did you see to get the goods back that you promised Chief Tracey you were going to get back?

A. I saw a fellow,—I don't even know his name.

Q. A stranger?

A. Yes.

Q. A total stranger to you?

A. Yes.

Q. Was it the same fellow in the Anderson case in New York,—that prohibition fellow, Mr. King?

A. No.

Q. What was this fellow's name?

A. His name might be King.

Q. It was *also a King?*
A. Yes."

* * * * * * * *

"Q. Who did you see?
A. A party,—I don't know his name.
Q. How did he look?
A. Kind of a big man.
Q. Was he connected with the Police Department by any accident?
A. No; he looked more like a Brewery man."

Then this remarkable story follows:

"Q. Where did you pick this Brewery man.
A. I picked him out,—I stopped him down on Straight Street,—that's where I found him.
Q. What number Straight Street?
A. At the corner of Straight and Governor Streets.
Q. What time did you meet him?
A. I met him there about a quarter past eleven.
Q. By appointment?
A. No.
Q. Morning or night?
A. Morning.
Q. And you approached him, never having seen him before?
A. I knew him by sight.
Q. Call him by name?
A. No.
Q. Just walked up to him and said what?
A. I said to him 'Now, if there is anything that was taken out of that Brewery, if you can get it back, you will maybe get some people out of trouble,' and he said 'Well, I'll see what I can do.' So afterwards, I told the the Chief 'I think the things will be brought back.' I don't know about any other thing connected with it.
Q. This fellow you saw didn't promise you anything?
A. No, sir.

Q. And did not tell you when he would send the goods back?

A. No.

Q. Or what would be sent back? A. No, sir.

Q. Or where you could get them?

A. No.

Q. Or when he would deliver the burner?

A. No.

Q. Told you nothing about the particulars at all?

A. No, sir.

Q. And you on the strength of that went back to Chief Tracey and said that you were going to get the goods back?

A. Yes.

Q. That's your story, is it?

A. Yes.

Q. And, I suppose, you are going to stick to that?

A. Yes, I will.

Q. Did you see this party, or did you have somebody else see this stranger?

A. I saw him.

Q. You have not changed your story tonight from the last time you testified here?

A. Why?

Q. Did you?

A. I don't think so.

Q. Your recollection of what you said here last Tuesday night is distinct?

A. Yes.

Q. You were a witness in a proceeding here last Tuesday night?

A. Yes.

Q. And you testified at that time, did you not, in the matter of the investigation of charges against officer Perry?

A. Yes.

Q. I ask if it is not true that you were asked this question, and gave the following answer to the question:

'Q. When?

A. The next morning I walked through the place and was interested in looking around.

Q. What did you do then?

A. Well, I went and saw this party, or got some one else to see him, and he said he would bring it back.'

Did you testify to that statement of facts?

A. If it is there, I must have.

Q. Was that true or false?

A. That is just what I say now.

Q. Did you go yourself to this stranger, or did you get someone else to go to him?

A. I went myself.

Q. What did you mean when you said 'I got someone else to see him,' at the last hearing?

A. I said I did.

Q. Mr. Van Noort, I'll read it again: 'Well, I went and saw this party, or got someone else to see him'? what did you mean by that?

A. That's wrong.

Q. What's wrong?

A. I say I saw him.

Q. Then it was not true that you got somebody else to see him?

A. No.

Q. And, if you said that at the last hearing, it was not true but false?

A. It must be, because I saw him myself.

Q. Let me ask you this question: You were asked this: 'You were perfectly willing to see somebody stealing something out of the window without notifying the police' and the reason you gave in your answer was, because you were not interested,—is that correct?

A. Yes.

Q. And that is the only reason?

A. Yes.

Q. Have you changed your mind about the reason or reasons?

A. No.

Q. Is it not a fact that at the last hearing you said the reason was 'because I think the law is a joke,—it belonged to the man, and I thought he was only stealing what rightfully belonged to him'?

A. That's right.

Q. Then the reason you did not tell the officers was, because the law is a joke,—is that right?

A. Yes; that's right.

Q. It is true that at the last hearing you said the man that took the goods took his own goods?

A. I thought he was.

Q. Didn't you say he was taking his own goods?

A. I did not know if they were or not.

Q. Let me read you this question asked you and your answer to the question again:

> 'Q. You were willing to stand by and see somebody stealing something and not tell the Police?
>
> A. Yes, I would, because I think the law is a joke,—it belonged to the man, and I thought he was only stealing what rightfully belonged to him'—

Is that true or false?

A. True.

Q. Then the goods did belong to the man?

A. I can't say that.

Q. Why did you state so at the hearing last week?

A. Because I thought they did.

Q. And when you said, 'it belonged to the man,' you now say your answer was intended to mean 'you thought it belonged,' is that right?

A. That is right.

Q. Mr. Van Noort, you were asked by Mr. Spitz how the man looked, were you not?

A. Yes.

Q. And you told him that you did not know, because you could not see him very well,—is that right?

A. Yes.

Q. Despite the fact that you could not see him very well, you were able to go up to him on the street the next day and know that he was the man who took the goods?

A. I didn't know if he was or not.

Q. Oh, you just took a chance and said 'Are you the fellow who took the thing out,' is that it?

A. Yes.

* * * * * * * *

Q. Were they in a position to see this window through which this object vanished or disappeared?

A. No, sir.

Q. And, you never mentioned it to them?

A. No.

Q. And you had no occasion, either directly or indirectly, to refer to the fact that something went out of the window?

A. No.

* * * * * * * *

Q. As a matter of fact, you don't know what it was?

A. No.

Q. What class of object or what the character of the thing was that went out of the window, you don't know?

A. No.

Q. You never learned?

A. No."

* * * * * * * *

At page 46:

"Q. You will not say that anything went out of the place, so far as you know?

A. No.

Q. And, that you are sure of?

A. I am sure of."

Testimony of this character is certainly not the type to warrant such a drastic punishment as dismissal from the Police force of officers who have served for 19 years without any imputation of misconduct. This witness' testimony was so contradictory and unreliable that the Supreme Court was perfectly justified in reversing the finding made by the Commission and it might well be said that the Court was justified in disregarding entirely the testimony of this witness who has been characterized as the only eye witness in the case.

No quarrel is had as to the rule of law that the Court on certiorari will not weigh the evidence, if it forms a rational basis for judgment but where the evidence is of such character as this, the Court is perfectly justified in disregarding and ruling that it was insufficient and NOT a rational basis for judgment and that the decision of the Board was not in accord with the evidence.

POINT II.

The form of judgment is not material in summary actions such as the case at bar.

Counsel desires first to call attention to page 8 of the record. There is annexed to the return alleged minutes of the proceedings of the executive session of the Board of Police and Fire Commission during the trial of Officer Perry and Officer Kohn and McCormick. These minutes attempt to show that the Commission found the defendants Kohn and McCormick guilty of the charges set forth in the complaint. These min-

utes are improperly part of the return. When the Board returned from executive session, the findings were not as stated in the minutes (Case, page 8), but rather as stated on page 96 where the President in announcing the judgment said that the defendants were guilty of conduct unbecoming officers and were also guilty of neglect of duty. Neither one of these findings is in accordance with the complaint charged. The defendants were charged, as shown above, with wilfull disobedience of orders and with conduct subversive of good order. The charge of conduct unbecoming an officer is a separate violation, (see page 104, sections 13 and 14), which shows that although charged with one offense, defendants were found guilty of another. As to the finding of neglect of duty, there was no charge to that effect. In order to warrant the imposition of any sentence it was incumbent upon the Board to find the defendants guilty as charged. This the record clearly shows it did not do.

Nor do we think can it be successfully maintained that the Court will look at the whole record of the testimony which is attempted to be sent up under P. L. 1914, page 419. Appellants invoke this statute to aid any infirmities in the form of judgment, the underlying thought being that the stenographic transcript will cure the findings which failed to set forth the evidence on which they are based. That this statute has not been complied with has been already answered under the first point argued, we think, where it has been shown that the transcript was not certified by the stenographer. Even assuming that the form of the judgment is not material, it has already been shown that the

judgment did not follow the charges in the complaint. It will now be shown that there was no basis whatsoever for the rendering of any valid judgments in this case.

POINT III.

Does a Municipal Board take judicial notice of the ordinances of that particular municipality?

We are at a loss to understand in the first place how this ordinance is inserted in the state of the case. No where during the course of the trial was it offered in evidence. An examination of it shows that it is the creature not of the municipality but of the Board of Fire and Police Commissioners of the City of Paterson. Case, pages 99 to 107. While it may be true that a Municipal Board takes judicial notice of the ordinances of the municipality, it does not follow that ordinances of subordinate Boards will be given judicial notice. In *Hankinson* v. *Trenton,* 51 Law, 495, the second syllabus reads as flolows:

> "Where the gravamen of such proceedings is the violation of an ordinance, not of the municipality itself, but of a sub-department of limited jurisdiction, such ordinance must appear in evidence before the magistrate; it will not be noticed judicially."

The Court expressly ruled that judicial notice would not be taken of by-laws and enactments of subordinate departments, and side-stepped a decision on judicial notice of strict municipal ordinances. In the *Galen Hall* case, 76 N. J. L. 20, the Court expressly decided that a municipal

Court would take judicial notice of the ordinances of that particular municipality, and that on review, an Appellate Court in support of such judgment would judicially notice municipal ordinances of which the Court below was thus at liberty to take notice. In *Byer* v. *Harris,* 77 Law 304, this distinction is again made. See particularly page 308.

On page 30 of his brief (first full paragraph) appellants' counsel says the case at bar deals with a violation of an ordinance *of the City of Paterson* in attempting to distinguish the case of *Kelly* v. *Bishop,* 119 Atl. page 6. As we have shown before, a reference to page 99 of the record shows that this was an ordinance passed by the Board of Fire and Police Commissioners of the City of Paterson signed by the president of that Board and attested by its Clerk.

According to the distinction pointed out in the cases cited above, it would seem to be necessary for the Board to have introduced in evidence at least the ordinance set out on page 99 of the record. The ordinance not having been introduced in evidence, there was no basis for convicting the defendants of the charges laid in the complaint. As was said in the *Kelly* case (*supra*) by Mr. Justice Bergen, speaking for the Supreme Court in setting aside a conviction and order of dismissal.

> "The other reason is that there was no proof that the rules of the police commission, which prosecutor was charged with violating, have any existence, and therefore there was a failure of proof of the material matter upon which the conviction must rest, for without it there was no foundation for the finding."

Here there was no proof of the existence of the ordinance under which appellees were convicted.

In view of the fact that the Supreme Court has already gone into the facts and found that there was no rational basis for the judgment of the Board; the transcript of the testimony not having been properly authenticated, and the ordinance under which the charges were made not having been introduced in evidence as it should have been, it is respectfully urged that the judgment of the Supreme Court be affirmed.

Respectfully submitted,

WEINBERGER & WEINBERGER,
Attorneys for and of counsel
with Prosecutors-Appellees.

I.

STATEMENT

On January 6, 1926, the Police Department of the City of Paterson raided a brewery which was being unlawfully operated in a garage located at 17 Ann Street in the City of Paterson. Officer Kohn and officer McCormick were detailed to guard the property and to see that no one entered the premises or took anything therefrom until such time as the Federal authorities arrived. They were relieved from this duty by Officer Perry at about three o'clock in the afternoon of that day. When the Federal authorities arrived it was discovered that materials had disappeared from the brewery. The Chief of Police of the City of Paterson then made complaints against officers Kohn and McCormick and officer Perry because these officers were in charge and ordered to protect the contents of the brewery from the time the raid took place to the time of the arrival of the Federal authorities, and the material disappeared either while officer Perry was in charge or while officers Kohn and McCormick were in charge. A trial was had and the Board of Fire and Police Commissioners found that officer Perry was "not guilty" and that officers Kohn and McCormick were "guilty", because they found that the material disappeared during the time that officers Kohn and McCormick were in charge of the brewery. State of Case, p. 7, l. 20 to p. 9, l. 25.

The complaint made and signed by John M. Tracey, Chief of Police of the City of Paterson was in the following language:

To the Board of Fire and Police Commissioners of the City of Paterson:

I, John M. Tracey, Chief of Police of the City of Paterson, do hereby charge that Anthony V. Kohn, a member of the Police Department of the City of Paterson ***did violate*** on the 6th day of January, 1926, ***an ordinance*** entitled, "An ordinance to establish, regulate and control a day and night police; to regulate and define the manner of their appointment and removal, their duties and compensation," passed December 29, 1921, and approved December 31, 1921, in that:

1. He did violate paragraph two of section fourteen of said ordinance in that he failed to protect properly certain hops, sugar, pumps, burners and other contents of the building at No. 17 Ann Street, and allowed same to be removed from said building, in willful disobedience of orders.

I, John M. Tracey, Chief of Police of the City of Paterson, do hereby further charge that Anthony V. Kohn, a member of the Police Department of the City of Paterson, did violate on the 6th day of January, 1926, the aforesaid ordinance in that:

2. He did violate paragraph 14 of section 14 in that he was guilty of conduct subversive of good order and the discipline of the force, in that he did allow certain hops, sugar, pumps, burners and other contents of the building at No. 17 Ann Street to be removed from said building, in willful disobedience of orders.

(Signed) John M. Tracey,
Chief of Police.

State of case, page 2, line 30 to page 3, line 27.

On January 12, 1926, the said Anthony V. Kohn appeared before the Fire and Police Commissioners with counsel and after the charges were read to him he pleaded "Not Guilty." The Commissioners then set January 19, 1926 at 8 o'clock in the evening in the Council Chambers of the City Hall as the time and place for the trial of the prosecutor-appellee, Anthony V. Kohn, State of Case, p. 3, l. 28-38. On said January 19, 1926, the prosecutor-appellee appeared with counsel for trial. A stenographer was sworn and took the testimony in the case. P. 6, l. 6-14. After the hearing, during which both sides fully presented their case, officer Kohn was found guilty by the commissioners of failing to protect properly certain material in the building at 17 Ann Street in willful disobedience of orders, and by them dismissed from the police force.

The prosecutor-appellee then procured a Writ of Certiorari to review the proceedings and the matter was heard before Justice Black, sitting as a single Justice.

Justice Black, after hearing the argument of counsel, ordered the conviction and dismissal of the prosecutor-appellee by the Fire and Police Commissioners set aside because of the insufficiency of the evidence and because the evidence clearly showed that the decision was not in accord with th evidence, State of Case, p. 113, and from that decision we now appeal.

There will be discussed all the reasons assigned by counsel for the prosecutor-appellee for reversal of the decision of the Board of Fire and Police

Commissioners of the City of Paterson before the Supreme Court.

It is stipulated that the case of the prosecutor-appellee, Anthony V. Kohn, be argued alone and that the decision in the one case shall apply equally to the prosecutor-appellee, James McCormick, for Officers Kohn and McCormick were in charge of the raided brewery at the same time, and that all the evidence and facts of the case be applied equally to both. State of Case, p. 117.

II.

SPECIFICATIONS

Justice Black, sitting as a single Justice, under the Statute, reversed the decision of the Board of Fire and Police Commissioners of the City of Paterson, because the judgment of said Board was erroneously entered, because of insufficiency of the evidence. State of Case, p. 113.

In this Appeal, I will discuss all of the Reasons assigned by the Prosecutor-Appellee in the Appeal below.

The reasons filed were:

> 1. Because the rules and regulations, governing the said police force, if any such rules and regulations were in force, were not proved before the said Board of Police Commissioners, on the trial of the said prosecutor, and were not offered in evidence.
>
> 2. Because the complaint and charges made against the Prosecutor, and upon

which he was tried, were not offered in evidence at the said trial.

3. Because there was no legal judgment entered against said prosecutor.

4. That the alleged findings of the said Board of Police Commissioners, were illegal, and contrary to law, in that they fail specifically to allege any legal violation.

5. That there was no lawful evidence adduced at the hearing before the Board of Police Commissioners, upon which to base a conviction, and that the prosecutor was dismissed from the police force without any reasons whatever, and not in accordance with law.

6. That no evidence was adduced showing the existence of any rules or regulations which he had violated.

7. That there was a failure of proof of the material matter upon which the alleged conviction is sought to be predicated.

8. There was no credible or reliable evidence upon which to predicate the conviction.

9. That the said prosecutor has been served with a notice, removing him from the Police force, and that said proceedings are wholly illegal and not supported by a legal judgment.

10. That the notice of dismissal is not predicated upon a legal and valid judgment.

11. That there was no legal judgment entered against the said prosecutor, and

therefore, he was expelled from the Police Force of the City of Paterson, illegally, and that the said conviction was in divers other respects, illegal and contrary to law.

State of Case, p. 108.

I will discuss these reasons under four heads, A, B, C and D.

ARGUMENT

A.

WHERE THERE IS EVIDENCE UPON WHICH THE BOARD OF FIRE AND POLICE COMMISSIONERS COULD FIND THE PROSECUTOR APPELLEE GUILTY, WHICH FORMED A RATIONAL BASIS FOR ITS JUDGMENT AGAINST HIM, THE COURT WILL NOT SET ASIDE THE JUDGMENT.

In the case at bar the testimony of Captain Peter Murner, page 12, line 31, was:

> "Q. Captain Murner, did you assign any officers to take charge of the brewery that had been raided at 17 Ann Street? A. Yes.
> Q. Who did you assign,—what officers? A. Officers Kohn and McCormick."

Again at page 13, line 1:

> "Q. At what time? A. About 12.50.
> Q. And with what instructions, if any?

A. To see that nobody went in there and to see that nothing was disturbed."

The testimony of John Van Noort, page 26, line 26, was:

"Q. On January 6th, of this year, were you at No. 17 Ann Street, Paterson? A. Yes, sir.

Q. And, what time of day was that? A. About twenty minutes of three.

Q. In the afternoon? A. Yes, sir.

Q. And were any officers there when you arrived? A. Yes.

Q. Who? A. Officers Kohn and McCormick.

Q. Did you have a conversation with them? A. No,—only just said "Hello"."

Again at page 27, line 2:

"Q. Did you ask them if you could go in the place there? A. No; I walked in; they let me in.

Q. They let you in? A. Yes.

Again at page 27, line 27:

"Q. And while you were in there, did you see anybody take anything out of there? A. I saw something going out of a back window there; yes.

Q. What was it? A. I don't know what it was."

And at page 28, line 29:

> "Q. What time was it that you saw this man putting something out of the window? A. About five of three.
>
> Q. Were officers Kohn and McCormick in the place there then when you were in there? A. They were; they were in that 'L'."

At page 29, line 31:

> "Q. At the time you saw something going out of the window, was officer Perry there? A. No, sir; he was not."

Again at page 32, line 13:

> "Q. And you say you left the premises at five minute to three? A. Yes.
>
> Q. Sure about that? A. No, I said that machine went out of the window five minutes of three, and I left the premises three o'clock, when officer Perry came, and the patrol officers."

And at page 52, line 10:

> "Q. There has been a question asked by counsel that confused my mind—counsel asked you the question: there was no one else in the building besides yourself at the time the stuff was going out of the window, —there was somebody else in that building,

was there not, in the main building where the brewery was? A. Yes.

Q. Positively someone there? A. Yes, the one that put the piping out."

The testimony of prosecutor-appellee Kohn, page 72, line 21:

"Q. I show you Exhibit P-1, P-2, P-3, and P-4, and ask you whether or not the different articles you see in those photographs were in the premises when you got there? A. Yes, sir; everything."

Testimony of Detective William H. Lord was as follows: State of Case, p. 17, l. 20:

"Q. You went back to this brewery at 17 Ann Street later in the day? A. Yes, about four o'clock.

Q. With whom? A. With the Government men.

Q. How many? A. Three.

Q. And what did you find when you got there? A. I found that some of the things in the place had disappeared from there.

Q. Were you present when the inventory was taken? A. Yes, when Ayres and Bland took it.

Q. Did you check up on the inventory? A. No, I did not.

Q. Do you know of your own personal knowledge, do you, that some things were missing? A. Yes, I knew the hops and sugar were missing?

Q. That is, when you went back there at four o'clock, that was missing? A. Yes.

Q. Your attention was called to a burner that was missing?

Q. Well, did you investigate? A. Yes; I told them it was under the boiler, and I went back to look, and I looked under the boiler and found it was gone.

Q. Did you later see that oil burner any place else? A. I saw part of it the next morning, the 7th, part of it at headquarters, and later on, we got the other part in Van Harken's wagon in the Fair street garage."

The evidence that I have hereinabove quoted without anything further is sufficient to justify a conviction in this case. Summarized the evidence quoted above follows:

We have Captain Murner's testimony to the effect that officers Kohn and McCormick were sent to the raided brewery with specific instructions ***not to let anyone in the place and to see to it that nothing was touched or removed.*** We have John Van Noort's testimony to the effect ***that the officers allowed him to enter the premises and that while he was there he saw someone remove something from the place and that it was a machine or piping,*** and John Van Noort further testified that this happened while officers Kohn and McCormick were there and before officer Perry had arrived. There is not a doubt in this case that something was removed either while the prosecutor appellee was present or while officer Perry was present. ***The only eye witness in the case testifies that something was removed from the***

premises while officers Kohn and McCormick were there and before officer Perry had arrived, and the same witness testified that he was allowed to enter the premises with the permission of officers Kohn and McCormick. We have the testimony of Detective Lord that an inventory was taken at the time the prosecutor appellee was in charge, and that between the time the prosecutor appellee was in charge and the time he returned at about four o'clock some of the materials which were in the raided brewery were missing.

Is this not sufficient evidence to find the prosecutor appellee guilty of having violated the orders of his superior officers in allowing someone to enter and to not properly guard the material in the premises; has not that judgment a rational basis?

I am quoting some of the evidence in this case because the Supreme Court reversed the judgment of the Board of Fire and Police Commissioners of the City of Paterson because of insufficient evidence, and because there was no evidence upon which the judgment was founded. Proceeding then with the evidence in this case the prosecutor appellee testified as follows, State of Case, p. 78, l. 19:

> "Q. Did you have a good view of the premises from where you sat? A. Yes, where the beer was.
>
> Q. Have a good view of all the premises? A. No, not all.
>
> Q. Why not? A. You couldn't see on account of that "L" there.
>
> Q. Why didn't you so station yourself so that you could see all of the premises? A.

You couldn't. I just sat there where I could see the beer.

Q. You were sent down there to guard the place and see that nothing was taken out? A. Yes.

Q. And yet you sat in the place where you did not have a full view of all the premises? A. Yes; that's right. I sat down there."

Again on page 79, line 16:

"Q. Did you know that there was a window open in there? A. A window was open about that much in the back (indicating).

Q. You knew that? A. Yes, it was open when Sergeant Lord was there.

Q. You placed yourself in such a position that you could not see that window? A. Just a few minutes when officer Kovach went out.

Q. How long? A. Oh, fifteen or twenty minutes before he went out, I was all around the brewery."

Again James McCormick, one of the prosecutor-appellees, on page 84, line 1:

"Q. What did you do in the "L"? A. Sit down.

Q. Did you notice the window open in the rear when you got there? A. Yes, a little bit.

Q. And you took the position in the "L" where you had a good view of the whole room? A. Half of it.

Q. Only half of it? A. Yes.

Q. You don't know if anyone removed anything from there or not? A. I do not.

Q. You don't know if anyone came in there or not through the window? A. I didn't see anybody.

Q. They could have come in without you seeing them? A. They could have come in."

Again at page 84, line 33:

"Q. Why did you not station yourself in a position there where you could see the whole room? A. That is the only way in, —I didn't think anybody would fly in the window. It was all wet in there."

So that from the testimony of the prosecutor-appellee he so stationed himself in the raided brewery that he did not have a view of all of the material, although he knew a window was open in the rear and that he had specific instructions to see that nothing was taken from the brewery and not to let anyone enter. My opponent may argue that the testimony shows that the prosecutor-appellee allowed John Van Noort to enter the premises upon instructions from his superior officer, Sergeant Detective Albers, but that is contradicted by the testimony of John Van Noort on page 31, line 19, (State of Case):

"Q. Did detective Alber go in there with you? A. No.

Q. Sure about that? A. Sure.

Q. Was detective Alber in there while you were in there? A. No.

Q. Where was detective Alber when you saw him? A. He was outside when I left.

Q. Where did you see him? A. Outside of the building."

My opponent may quote the testimony of James Laurie to show that the materials were moved from the building after officers Kohn and McCormick were relieved by officer Perry. The testimony shows that this witness, James Laurie, never saw the materials taken from the window, but testified that he saw the material being moved at a certain hour, so that it may have been taken from the building at any time and left there and later moved to another part of the yard. To substantiate this I quote that part of the evidence of James Laurie:

Page 25, line 5, State of Case:

"Q. You didn't see any of the stuff coming out through the window? A. No.

Q. You don't know where it was coming from? A. From the alleyway, but I don't know from where.

Q. They may have been carrying it from some place on the ground to another place? A. Yes.

Q. You don't know what time it came out of the window? A. No, sir."

Can it be said that from all of the testimony herein cited, without any further testimony in the

case, either in corroboration or in contradiction of this testimony, that the Board could not reasonably and rationally find that the defendants did not properly protect the contents of the building and did not obey the orders of their superior officer to allow no one to enter the premises?

In the case of Ayres vs. Newark, 49 N. J. L., page 170, at page 173, bottom, the court held:

> "This court will not weigh the evidence on these facts. It is sufficient that there was a legal and substantial basis shown for his removal, upon which the commissioners acted within their authority."

This case has been cited and followed with approval in innumerable cases. I have not been able to find one case wherein this doctrine has not been substantiated and followed.

This Court in the case of Cavanagh v. Police Commissioners, 59 New Jersey Law, page 412 at page 413 said:

> "In Devaut v. Mayor of Camden, 19 Vroom 434, in this court, Mr. Justice Dixon held: 'The technical rules that have been judicially adopted with regard to inferior criminal prosecutions are not to be applied to these investigations, for which it is proper that proceedings to deprive persons of common rights for alleged crimes should be confined by somewhat strict limits, the re-

moval of incompetent or ill-behaved officials from their exceptional positions of authority and responsibility should be easy and prompt, and no forms should be requisite which are not in themselves substantial safeguards of justice.'

The defendant board had the power to try the prosecutor as he was tried on the charge which was duly made against him, and if the charge was sustained on a fair trial, it had the power to dismiss him from the police force. The court will not weigh the evidence on which the board acted; it is enough that there was evidence on which the board found the prosecutor guilty of the charge, and that such evidence, whether weak or strong, formed a rational basis for its judgment against him. Devault v. Mayor of Camden, 19 Vroom, 433; Ayers v. Newark, 20 Id. 170; Ackerly v. Jersey City, 25 id. 310.

The reasons which are assigned by the prosecutor for reversal of the action of the defendant board in dismissing him from the police force of Hoboken, ***are based on the insufficiency of the proof of his guilt,*** and on technical points relating to the conduct of his trial, none of which reasons, in our judgment, have sufficient foundation, in law or in fact, to warrant our interference with the action of said board.''

In Herbert v. Atlantic City, 87 N. J. L., page 98, at page 102 this Court through Justice Kalisch said:

> "In Reilly v. Mayor and Board of Aldermen of Jersey City, 64 N. J. L., 508, Mr. Justice Gummere, speaking for this court (on p. 510) says:
>
> "In reviewing the action of a board of police commissioners, ***this court will not weigh the evidence taken before them,*** for the purpose of reaching an independent conclusion on the question of the guilt or innocence of the prosecutor. It will only consider such evidence for the purpose of determining whether or not it affords a rational basis for the judgment against him. ***If it does, then no matter whether the evidence be weak or strong, this court will not interfere.*** Dodd v. Camden, 56 N. J. L. 258."

Other cases to the same effect are Devault v. Camden, 48 Id., 433; Ayers v. Newark, 49 Id., 170; Cavanagh v. Police Commissioners, 59 Id., 412; Alcutt v. Police Commissioners, 66 Id., 173.

In Bowlby v. Dover, 68 N. J. L., page 97, at page 98 the court said:

> "Nor will the court weigh the evidence upon which the prosecutor was found guilty, if it formed a rational basis for the judgment against him. Ayers v. Newark, 20 Vroom, 170; Ackerly v. Jersey City, 25 Id., 310, Cavanagh v. Police Commissioners, 30 Id., 412."

In Cavanagh v. Board of Police Commissioners of the City of Hoboken, 59 N. J. L., p. 412, at page

414, a case in which our Justice Minturn was of counsel, the court held as follows:

> "The defendant board had the power to try the prosecutor as he was tried on the charge which was duly made against him, and if the charge was sustained on a fair trial, it had the power to dismiss him from the police force. The court will not weigh the evidence on which the board acted; ***it is enough that there was evidence on which the board found the prosecutor guilty of the charge, and that such evidence, whether weak or strong, formed a rational basis for its judgment against him.*** Devault v. Mayor of Camden, 19 Vroom 433; Ayers v. Newark, 20 Id. 170; Ackerly v. Jersey City, 25 Id. 310."

In The State v. Jersey City, 53 N. J. L., page 544, at page 545, court held:

> "The charge was in writing, signed by the chief engineer of the fire department, a copy was served upon the prosecutor and he had notice of a hearing before the board of fire commissioners. He appeared at the hearing, and witnesses on both sides were examined under oath. The act of March 24th, 1885, authorizes the dismissal of members of the fire department for 'misconduct'. Disorderly conduct at a fire is misconduct within the meaning of the act. The prosecutor had a hearing on notice. A reasonable and a fair hearing and investiga-

tion, without formality in the procedure, is all that is required. This court will not retry or review the case; it is sufficient if there is a legal and substantial basis for removal, on which the commissioners acted within their authority. Ayers v. Newark, 20 Vroom, 170."

This court in the case of State v. Board of Police Commissioners of the City of Camden, page 258 at page 259 said:

"The Board had power to try the chief of police, and if he had been guilty of misconduct it had power to remove him from office. There must, however, be a legal and substantial basis shown for his removal, upon which the commissioners acted within their authority. The court will not, however, weigh the evidence on the facts presented. Ayres v. Newark, Id., 173. Whether the evidence is weak or strong, it is sufficient if it formed a rational basis for the judgment against him. Devault v. Mayor of Camden, 19 Id., 433, 435."

This court in the case of McGovern v. Board of Public Works, 57 N. J. L., page 580, at page 587, said:

"The evidence or facts may be disputed or conflicting, but that would not be sufficient for a reversal. This dispute or conflict was for the board to determine, and the

court would not interfere unless this award of the contract was an unreasonable one, or that clear injustice would result. Jeliff v. Newark, 19 Vroom, 101; Hegeman v. Passaic, 22 Id., 109; Raymond v. Rutherford, 26 Id., 441.

If there was a dispute upon the evidence, upon the question left to the determination of the board, it would not be within the province of this court upon certiorari to try that question over again and determine such disputed question of facts, and to consider its weight or sufficiency so as to review the determination of the board, ***especially where there is any evidence to support it.*** Craft v. Smith, 6 Vroom, 302; Jeffrey v. Owen, 12 Id. 260; Overseer of Madison v. Overseer of Monroe, 13 Id. 493; Britton v. McDonald, 14 Id. 591; Lush v. Foster, 15 Id. 378; Sloan v. Wills, Id. 584; Roehers vs. Remhoff, 26 Vroom, 475.

If there was evidence or facts before the board, whether weak or strong, which formed a rational basis for the determination, it cannot be reversed. Dodd v. Camden, 27 Vroom, 258.

The court on certiorari will not weigh the evidence. It is sufficient if there is a legal and substantial basis for the determination on which the board acted within their authority. Ayers v. Newark, 20 Vroom, 170."

B.

IT WAS NOT NECESSARY TO OFFER THE COMPLAINT AND CHARGES AGAINST THE PROSECUTOR APPELLEE IN EVIDENCE AT SAID TRIAL.

I will pass over this point with a few remarks because I do not think my opponents seriously urge it.

It is fundamental that having pleaded to the charges and having appeared for trial upon the charges or complaint, it is unnecessary to offer them in evidence at the trial. In no case, either civil, quasi-criminal or criminal is such a step necessary in the proceedings. For instance, in the District Court, the State of Demand is not offered in evidence before proceeding to trial; in the Municipal or Police Court, the complaint is not offered in evidence at the trial; in the Circuit Court or Supreme Court the complaint is not offered in evidence at the trial. In criminal cases the complaint or indictment is not offered in evidence at the trial, and with these few remarks I will pass over this point.

C.

THE FORM OF JUDGMENT IS NOT MATERIAL IN SUMMARY ACTIONS SUCH AS THE CASE AT BAR.

In Cooper v. Jersey City, 53 N. J. L., page 544, at page 545, the court said:

> "The commissioners were not required to prepare any formal record of conviction, but it was necessary, in order to validate the dismissal, that they should find the prosecutor guilty of the charge imputed to him, and that it should so appear on the minutes of their proceedings.
>
> Judgment of dismissal could not be passed until conviction."

In Devault v. Mayor of Camden, 48 N. J. L., page 433, at page 434, this court said, in a case similar to the case at bar:

> "The design of the statute is plain. It is not to prescribe any mere form of procedure or to interpose any obstacle in the way of rendering police departments respectable and efficient. It is, on the contrary, to fix substantial safeguards for the purpose of enhancing their value by preventing interference with them except on proper grounds. It requires, in order to the the removal of any officer or employee in such departments, that a cause of complaint should be alleged against him, in writing, signed by the person making the charge; that the cause so alleged should be incapacity or misconduct with reference to his official position, nonresidence, or disobedience of some just regulation established for the department; that he should have a fair and public trial upon the charge, after due notice, and with every reasonable opportunity to make defence before the appropriate

municipal authority; and that he should be adjudged guilty of the charge.

The province of this court is simply to see that these rights have been secured. Neither the statute nor the dictates of sound policy warrant our going further. The technical rules that have been judicially adopted with regard to inferior criminal prosecutions are not to be applied to these investigations, for while it is proper that proceedings to deprive persons of common rights for alleged crimes should be confined by somewhat strict limits, the removal of incompetent or ill-behaved officials from their exceptional positions of authority and responsibility, should be easy and prompt, and no forms should be requisite which are not in themselves substantial safeguards of justice. Murdock v. Phillips Academy, 12 Pick. 243; People v. Fire Com'rs. 77 N. Y., 153.

In our opinion, the prosecutor was charged, in the mode provided by the statute, with conduct unfit for a policeman, forbidden by the rules of the department and justifying his dismissal; was duly tried upon the charge before the proper municipal authority, and was found guilty upon evidence which, whether weak or strong, formed a rational basis for the judgment against him."

This care was decided in 1886 and has been followed by our courts until a recent decision of

our Supreme Court in the case of Marter v. Repp, 80 N. J. L., page 530, which case was affirmed by our Court of Errors and Appeals in 82 N. J. L., page 531.

In the Marter case the court seemed to have deviated from the long established principles decided in the Devault case and there held that it was necessary for the purposes of review that the substance of the evidence should be given in the record of a summary conviction to enable the court sitting in review to judge of its sufficiency, without distinguishing or reversing the Devault case or any part thereof, and the Marter case did not even cite the Devault case, although it had been the law of this state since 1886. The Marter case was followed by the case of Mullane v. South Amboy, 86 N. J. L. page 173, and in that case this court held that the Devault case was not in conflict with the Marter case but that it merely distinguished the Devault case. The law on this point was then so ambiguous that the legislature passed an act reiterating the principle of law as laid down in the Devault case, ***where the evidence is taken down stenographically.*** That act will be found in P. L. 1914, page, 419, and reads as follows:

> "A Supplement to an act entitled, 'An Act relative to the writ of certiorari (Revision of 1903)', approved April eighth, one thousand nine hundred and three.
>
> Be It Enacted by the Senate and General Assembly of the State of New Jersey:
>
> 1. In all cases of writs of certiorari hereafter allowed ***where the evidence given at the trial or proceeding under review shall***

> ***have been reported stenographically*** by a competent stenographer designated by the court, official, tribunal, board or governing body before whom such trial or proceeding shall be had, the official or court making return to said writ shall, when requested so to do by the prosceutor or respondent in said writ, and upon being provided with a transcript of such evidence, at least five days prior to the return day of said writ, which said transcript shall be duly certified by said stenographer, certify and send to the reviewing court as the evidence given at said trial or proceeding and as a part of the return to said writ, said transcript of said evidence, and said evidence shall constitute a part of the state of the case and be considered by the reviewing court upon the argument of said writ as the evidence given at said trial or proceeding."

The next case on this subject, after the passage of the act of 1914 supra, was the case of Hewson v. City of Newark, 111 Atlantic, page 497, and affirmed in this court in 112 Atlantic, page 498. The court said in the Hewson case, (not yet reported in the State reports) 111 Atlantic, page 497, bottom:

> "The next objection is that the findings do not set forth the evidence, and we are referred in support of this contention to well-known cases. The prosecutor has overlooked the act of 1914 (P. L. 419; Supp. to C. S. 117). This provides for a return of

> the stenographer's transcript of the evidence, whereas in the present case it has been reported stenographically, and expressly enacts that the stenographer's transcript shall constitute a part of the state of the case, and be considered by the reviewing court upon the argument of the writ of certiorari as the evidence given at the trial. This act was approved immediately after the argument of Mullane v. South Amboy, 86 N. J. Law, 173, 90 Atl. 1030, and may well have been meant to cure the difficulty that arose in that case."

In the case at bar a stenographer was duly sworn to take the testimony, State of Case, page 10, line 33, and the transcript of the testimony is printed in full in the State of Case, page 11 to 97, and is part of the record. Therefore all the reasons in reference to the judgment of the Board of Fire and Police Commissioners, or of their findings, assigned by prosecutor-appellee in appealing to the Supreme Court, are answered by the matters contained under this point. This leaves only reason No. 1 unanswered in this brief and I shall now take up their reason No. 1.

D.

A MUNICIPAL BOARD TAKES JUDICIAL NOTICE OF THE ORDINANCES OF THAT PARTICULAR MUNICIPALITY.

This doctrine was first presented to our Courts in the case of Hankinson vs. Trenton, 51 N. J. L.,

p. 496. In that case the question before the Court was whether or not the rules and regulations of a Board of Excise Commissioners which was organized and given power to make ordinances and by-laws regulating liquor traffic by an Ordinance of a municipality, and an Ordinance thus to be enacted by the Board of Excise Commissioners, was not submitted to the city council for approval but remained the sole and separate act of the Board of Excise Commissioners.

The Court in the Hankinson case differentiates between an Ordinance of a municipality and a By-Law of a Sub-Department. The Court on page 497 said:

> "The extension of doctrines of judicial notice to by-laws and enactments such as these would be to lay down the rule, that, before any municipal Court, no proof need be offered of the acts or procedings of any other Department, or subordinate body owing its existence to the same municipality."

By way of dicta the Court said that a municipal court will take judicial notice of municipal ordinances.

Although this enunciation of the rule was merely dicta, this case has been cited by our Courts as authority for that doctrine.

However, the matter came before the Supreme Court for a decision, and in the case of Gallen Hall vs. Atlantic City, 76 N. J. L., p. 20, the point under consideration was decided by our Courts for the first time. The Court on page 21 said:

> "Finally, the contention is made that the Ordinance itself was not offered in evidence and that this ommission is fatal."

And on page 22, the Court held

> "The matter thus presented without decision ***has now*** been examined, with the result that we think the correct rule to be that a municipal court takes judicial notice of the Ordinance of that particular municipality, and that on the review of judgment of such Court, the Appellate Court will in support of such judgment judicially notice municipal Ordinances of which the Court below was thus as liberty to take notice, or, what is the same thing, will presume that the judgment was based upon a legal Ordinance if there be such an Ordinance capable of supporting the judgment, of which Ordinance the Court below might have taken judicial notice."

The Supreme Court again re-affirmed the doctrine in the Galen Hall case, supra, in the case of Byer v. Harris, 77 N. J. L., page 305, at page 308:

> "No doubt the existence of the ordinance creating the board of excise commissioners was the foundation for the proceeding, and the title of that ordinance and the section alleged to have been violated was set out in the complaint. This ordinance being once passed by the common council, the

> police justice, holding the municipal court, could take judicial notice of it."

In the case at bar, the title of the ordinance and the section alleged to have been violated was set out in the complaint or charges. State of Case, p. 3, l. 7.

This doctrine of judicial notice was again affirmed in the case of Sidelsky v. Atlantic City, 84 N. J. L., page 198. In this case, Mr. Justice Minturn at page 200, said:

> "But aside from the authority of this legislative mandate, the rule is well settled that a municipal court takes judicial notice of the ordinances of that particular municipality, and that upon a review of the judgment of the municipal court, this court will in support of the judgment, judicially notice the municipal ordinances of which the court below was at liberty to take notice. (Galen Hall Co. v. Atlantic City, 76 N. J. L., p. 20; Byer v. Harris, 77 N. J. L., page 305.)"

It is the contention of Counsel for the prosecutor-appellee, that it was encumbent upon the respondent-appellant to prove the ordinance and he relies upon the case of Kelly v. Bishop, 119 Atlantic, page 6, (not reported in the State Reports) and the case of Eisberg v. Cliffside, 98 N. J. L. p. 260. Both of these cases hold that ***the rules and regulations*** of the police department must be proven. These cases are very recent and

were decided after the case of Galen Hall v. Atlantic City, supra, and the case of Byer v. Harris, supra, and the case of Sidelsky v. Atlantic City, supra, and yet none of these cases were even cited or mentioned in the decision in the cases relied upon by the prosecutor-appellee. That is, because the case of Kelly v. Bishop and the Eisberg case are not in point.

The case at bar deals with a ***violation of an ordinance*** of the City of Paterson, whereas, the Kelly and Eisberg cases both deal with ***a violation of the rules and regulations*** of a department of a municipality. In the Kelley case, the court held that there must be proof of the fact that the rules and regulations of the commission of which the accused was guilty of violating existed, but certainly that principle of law cannot apply to ordinances, because an ordinance is a public law and all of the inhabitants of the municipality are presumed to know the ordinances of that municipality.

In the case of Bradshaw v. City Council of Camden, 39 N. J. L., page 416, at page 418 (bottom), the Court said:

> "It being competent for the legislature to delegate to municipal corporations the power to pass ordinances of this character, which have the force, as to persons bound thereby, of legislative enactments, they should be interpreted by the same rules which govern courts in the construction of legislative acts."

> "Valid ordinances of municipal corporations are as binding upon the corporators and the inhabitants of such municipalities as the general laws of the State are upon the citizens at large."

(Citing 1 Dillon on Municipal Coprorations, Para. 246, note (1); Hopkins v. Mayor, &c. 4 M. & W. 640.)

In the case of Eisberg v. Cliffside, 105 Atlantic Reporter, page 716, relied upon by the prosecutor-appellee, the proceedings were to dismiss officers for failure to comply with police rules of schedule of alarm calls. It was contended that he was inefficient because certain schedules in ringing alarms were not complied with. Of course, it would be necessary to prove that such schedules existed and what they were, but in the case of an ordinance, notice is presumed. It is a public law and need not be proved.

The police department of the City of Paterson also has rules and regulations. They provide for the organization, keeping of records, the duties of respective officers, provide for a detective bureau, a bureau of identification, duties and obligations of patrolmen, provide for the answering of roll call, obeying orders concerning their departments, watching disorderly houses and disorderly persons and report violations and many other provisions, and this book of rules and regulations contains 99 pages.

If the charges against the prosecutor-appellee was for violations of rules and regulations of the police department, then it would be encumbent upon the respondent-appellant to prove the rules

and regulations, and the cases relied upon by the prosecutor- appellee would become applicable. In the case at bar, however, the charges or complaints were for a violation of a city ***ordinance,*** and under the cases herein cited, it was not necessary for the respondent-appellant to prove the ordinance.

The board sitting as a quasi-judicial body for the purpose of determining the guilt or innocence of the prosecutor-appellee and the enforcement of the ordinance occupied the same position as a court empowered to enforce laws generally. One fundamental rule of evidence which the board was bound to follow was the rule of judicial notice. It was required to notice, without proof, its own enactments. This rule is one of necessity and is found upon sound reasoning.

In Vol. 1, Greenleaf on Evidence, at page 6, the author said:

> "Courts are presumed to know the law under which they act and which they are constituted to administer, not only because these laws are matters of general notoriety, but upon the very necessity of the case, for without presupposing such knowledge, the first step in a trial could not be taken. Such laws, therefore, need not be proved, but the court is said to take judicial notice of it."

The court in the case of Gulnos v. County of Bergen, 74 N. J. L., page 543 at page 546, held that "the official action of a legal body which is

the result of judgment and discretion is a judicial act rather than a legislative one," citing numerous cases.

McQuillan on municipal ordinances, section 12 says:

> "The municipal ordinances and the State statutes are from a common source of authority. One class presents it in ad elegated, and the other a direct form, but it is the power of the State which speaks in both. The passage of an ordinance is, of course, a legislative act."

Section 22:

> "Notice of the existence of ordinances is required to be taken by all upon whom they have a binding effect, as the inhabitants of the municipal corporation which enacts them. So railroad companies and their employees, using railways within the city, must take notice of all valid ordinances relating to the operation of the road and the cars thereon. So strangers coming within the corporate limits, upon whom ordinances are binding, are chargeable with notice thereof. As all persons upon whom they are binding are charged with constructive notice of valid ordinnnces, ***no one when prosecuted for violation of an ordinance will be permitted to show that he did not know of its existence."***

Section 23:

"An ordinance is not an agreement, but a law, binding upon all persons to whom it applies, whether they agree to be bound by it or not."

Section 315:

"The usual rule of procedure that, neither presumptions of law, nor matters of which judicial notice is taken need be set forth in an indictment or information is applied properly to a statement or complaint for violation of municipal ordinances."

Section 373:

"Ordinances when legally enacted operate throughout the limits of the city in like manner as public laws operate within the state limits. The city or municipal courts bear the same relation to ordinances of the city as the state courts do to the public laws of the state. Hence, on principle, the municipal courts may for like reason take judicial notice of all city ordinances of a general nature, or those having a general obligatory force throughout the city. Hence the rule that courts will not take judicial notice of municipal ordinances does not apply to police courts and city courts, which have jurisdiction of complaints for the enforcement of ordinances. They will take

judicial notice of their ordinances, without allegation or proof of their existence." (Citing cases in California, Iowa, Kansas, South Caroline and West Virginia.)

In conclusion, I direct the Court's attention to the complaint in this cause, page 2, line 37, wherein the prosecutor-appellee was charged with violating an ***ordinance*** entitled, "An Ordinance to establish, regulate and control a day and night police; to regulate and define the manner of their appointment and removal, their duties and compensation," and again on page 3, line 7, of the complaint charging that the prosecutor-appellee "did violate paragraph two of section fourteen of said ordinance," and again on page 3, line 19, wherein they were charged with violating "paragraph 14 of section 14" of said ordinance. I refer the Court to the ordinance in question. State of Case, p. 99.

The cases of Kelly v. Bishop and Eisberg v. Cliffside, supra, which deal with rules and regulations have no application to the case at bar; but the decision of the Court in the case of Galen Hall v. Atlantic City, 76 N. J. L., page 20, which has been followed, without exception, by the Courts of this State, is in point and controlling upon the case at bar.

Counsel for prosecutor-appellee in his reasons filed in the Supreme Court, uses the term "rules and regulations" (State of Case, p. 108, l. 37, and p. 109, l. 24), and doesn't note that there is no charge of violating any rules and regulations in

the case at bar. The charges specifically charge violation of a city ***ordinance,*** State of Case, p. 3, l. 7.

Respectfully submitted,

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