

1941

Salt Lake City v. Andrew Revene : Abstract of Record

Utah Supreme Court

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E. Ray Christensen; Gerald Irvine; A. Pratt Kesler; Clarence M. Beck; Attorneys for Plaintiff and Appellant;

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In the Supreme Court

OF THE

State of Utah

SALT LAKE CITY, a municipal
Corporation,

Plaintiff,

vs.

ANDREW REVENE,

Defendant.

} Case No. 6330

Appeal from the District Court of the Third Judicial District
In and for Salt Lake County, State of Utah,
Honorable M. J. Bronson, Judge

ABSTRACT OF RECORD

E. RAY CHRISTENSEN,
GERALD IRVINE,
A. PRATT KESLER,
CLARENCE M. BECK,
Attorneys for Plaintiff and Appellant.

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In the Supreme Court

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SALT LAKE CITY, a municipal
Corporation,

Plaintiff,

vs.

ANDREW REVENE,

Defendant.

Case No. 6330

COMPLAINT

STATE OF UTAH

COUNTY OF SALT LAKE

ss:

Fr. 7 C. H. Barton, of Salt Lake City, in the County of Salt Lake, State of Utah, on behalf of said City, on oath complains that Andrew Revene whose other and true name is to complainant unknown, of Salt Lake City, in the County of Salt Lake and State of

Utah, on the 18th day of May, in the year of our Lord one thousand nine hundred and forty, at Salt Lake City, in the County of Salt Lake and State afore-said, unlawfully did commit the public offense of VIOLATING A CITY ORDINANCE, as follows, to-wit:

By then and there unlawfully he being then the operator of a barber shop located at 466 East 2nd South Street in said City permit said barber shop to remain open for the purpose of barbering after the hour of 7:00 o'clock p. m., to-wit: at the hour of 9:15 o'clock p. m. of said day, contrary to the provisions of Section 269 of Chapter 7 of the Revised Ordinances of said Salt Lake City, in such cases made and provided, as amended by Bill No. 41 published December 10, 1937.

C. H. BARTON,
Complainant.

Subscribed and sworn to before me this 21st day of May, A. D., 1940.

Witness:

A. H. ELLETT,
Judge, City Court.

M. H. KNUEDSON,
C. H. BARTON,
JOHN H. BARTON.

(Title of Court and Cause.)

SUMMONS

STATE OF UTAH
COUNTY OF SALT LAKE } ss:

STATE OF UTAH TO ANDREW REVENE:

Tr. 6 You are hereby commanded to be and appear before me at my Court Room in the Public Safety building in Salt Lake City, Salt Lake County, State of Utah, on FRIDAY, the 31st day of MAY, A. D., 1940, at the hour of 10 a. m. to answer a charge of violation of Section 269, Revised Ordinances of Salt Lake City, 1934, as appears from the complaint of C. H. BARTON on file in my office.

Dated MAY 23rd, 1940.

A. H. ELLETT,

City Judge.

Served the within summons of Andrew Revene on this 24th day of May, 1940, Salt Lake City, Utah.

M. R. PETERSON,

Officer.

THE ORDINANCE

AN ORDINANCE AMENDING ARTICLE 6 OF CHAPTER VII, of the Revised Ordinances of Salt Lake City, Utah, 1934, by adding in and to said Article 6 a new Section to be known as Section 269, relating to closing of barber shops.

Be it ordained by the Board of Commissioners of Salt Lake City, Utah:

SECTION 1. That Article 6 of Chapter VII of the Revised Ordinances of Salt Lake City, Utah, 1934, be and the same is hereby amended by adding in and to said Section 269, relating to closing of barber-shops, which shall read as follows:

SECTION 269. CLOSING OF BARBER-SHOPS. It shall be unlawful for the owner or operator of any barber-shop or for any agent or employee of such owner or operator of any barber-shop in Salt Lake City to permit such barber-shop to be or remain open for the business of barbering for a consideration, or otherwise, on Sundays, Thanksgiving Day, Christmas Day, New Year's Day, Washington's Birthday, Decoration Day, July 4th, July 24th, or Labor Day, or at any time other than the following:

From 8 o'clock A. M. to 6 o'clock P. M. on weekdays except Saturdays, when such days do not precede any legal holiday.

From 8 o'clock A. M. to 7 o'clock P. M. on Saturdays and on any weekday when such weekday precedes any legal holiday.

Except during the business hours hereinabove defined, every barber-shop shall be closed and it shall be unlawful for any person operating a barber-shop to prevent a free and unobstructed view of such

barber-shop by any method, or by the use of blinds, shades, screens, painted or frosted glass, or any such other device.

SECTION 2. In the opinion of the Board of Commissioners, it is necessary to the health, peace and safety of the inhabitants of Salt Lake City that this ordinance become effective immediately.

SECTION 3. This ordinance shall take effect 30 days after its first publication.

Passed by the Board of Commissioners of Salt Lake City, Utah, this 9th day of December, A. D., 1937.

E. B. ERWIN, Mayor.

(Seal)

ETHEL MACDONALD,
City Recorder.

BILL NO. 41.

Published December 10th, 1937.

(Title of Court and Cause.)

DEMURRER

Tr. 5 Comes now the above named defendant and demurs to plaintiff's complaint herein and for grounds of demurrer alleges:

That the facts stated in said complaint do not constitute a public offense.

CLIFFORD L. ASHTON,
Attorney for Defendant.

Copy of the foregoing Demurrer received this
31st day of May, 1940.

A. P. KESLER and L. BOYLE,
Attorney for Plaintiff.

ENTERED ORDER

Tr. 8 On June 15, 1940, cause was submitted on demurrer and taken under advisement.

ENTERED ORDER

Tr. 9 On November 23, 1940, the ^{City District} Court sustained defendant's demurrer to plaintiff's complaint and dismissed the complaint and discharged the defendant and exonerated his bondsmen.

(Title of Court and Cause.)

NOTICE OF APPEAL

TO PRATT KESLER, ATTORNEY FOR PLAINTIFF, AND TO LEE ACOMB, CLERK OF THE ABOVE ENTITLED COURT:

Tr. 4 PLEASE TAKE NOTICE that the above named defendant hereby appeals to the Third Judicial District Court in and for Salt Lake County, State of Utah, from the whole and each and every part of that certain judgment of conviction for unlawfully operating a barber shop after six P. M., made and entered on the 1st day of June, 1940, for which the above named defendant was fined the sum of \$15.

Said appeal shall be upon all questions of law arising in said case.

CLIFFORD L. ASHTON,

Attorney for Defendant.

Copy of the foregoing Notice of Appeal received 7th day of June, 1940.

A. PRATT KESLER,

Attorney for Plaintiff.

(Title of Court and Cause.)

NOTICE OF APPEAL

To the Above entitled defendant and to Clifford Ashton, Esq., his attorney:

YOU AND EACH OF YOU PLEASE HEREBY TAKE NOTICE: That the plaintiff in the above entitled cause hereby appeals to the Supreme Court of the State of Utah from the judgment therein entered in the said District Court in and for Salt Lake County, State of Utah, on the 23rd day of November, 1940, in favor of the defendant in said action and against the plaintiff and from the whole thereof.

Dated this 13th day of January, 1941,

E. R. CHRISTENSEN,

A. PRATT KESLER,

GERALD IRVINE,

CLARENCE M. BECK,

Attorneys for Plaintiff.

Received a copy of the foregoing Notice of Appeal this 13th day of January, 1941.

CLIFFORD L. ASHTON,
Attorney for Defendant.

(Title of Court and Cause.)

BILL OF EXCEPTIONS

Tr. 14 BE IT REMEMBERED: That this cause came on for hearing on the 15th day of June, 1940, at the hour of ten o'clock (10:00) a. m. thereof, before the Honorable M. J. Bronson, one of the judges of the above named court, sitting without a jury, Messrs. Gerald Irvine, E. R. Christensen, and Clarence M. Beck appearing for the plaintiff, and Clifford Ashton appearing for the defendant; and thereupon the following proceedings were had, that is to say:

WHEREUPON the following proceedings were had:

THE COURT: How does this come before the Court?

MR. ASHTON: This case is before a Court on a demurrer and the demurrer was overruled by Judge Ellett.

THE COURT: Just a general demurrer?

Tr. 15 MR. ASHTON: Just a general demurrer. Insufficiency of the ordinance—uncertainty. This is the third time it has been before the District Court. I think everybody simply wants to get the question

before the Court in a convenient and quick way.

THE COURT: This is your demurrer?

MR. ASHTON: Yes. Now, if it please the Court, the case of Salt Lake City against Andrew Revene is before the District Court the second time; it previously came before Judge Bosone and she overruled the demurrer and it was appealed to Judge Schiller. At that time briefs were presented by both Mr. Beck and myself; Mr. Beck representing the Barbers' Union on behalf of the City, and I am representing Andrew Revene.

Tr. 16. MR. IRVINE: It might be well to announce counsel for the City will ask Mr. Beck be joined to aid us.

THE COURT: The name of Clarence Beck may be entered as associate counsel with counsel for Salt Lake City.

MR. ASHTON: At that time briefs were prepared and Judge Schiller said he thought it was a combined law and fact case and he wanted to overrule the demurrer for that purpose; and I introduced evidence and Mr. Beck introduced evidence, and I had a transcript made for the purpose of appeal.
(Argument.)

MR. ASHTON: It may be stipulated that the transcript of the evidence heard in the case of Salt Lake City vs. Andrew Revene heard before Judge Schiller—Case No. 10743, heard before Judge Schil-

ler on the —— day of ——; decided by Judge Schiller on the 10th day of December, 1938, shall be introduced in evidence, and it shall be stipulated it shall be received in evidence, and it shall be stipulated that if the witnesses called in that case were called in this case they would testify to every material fact therein stated.

MR. IRVINE: To every fact therein stated.

MR. ASHTON: It would have to be material. Every fact therein stated.

Tr. 16a MR. BECK: In other words, we are agreeing that the transcript of testimony used in the prior Revene case, decided by Judge Schiller, shall be introduced in this case to all intents and purposes, and for the same purpose as in that trial.

THE COURT: I am to regard the evidence given in the other case as though it were given in this case?

MR. IRVINE: That is right. And Mr. Beck will provide Your Honor with that transcript.

MR. BECK: Yes.

C. H. Barton testified in behalf of plaintiff as follows:

DIRECT EXAMINATION By MR. IRVINE:

Tr. 25 My name is C. H. Barton. I am a barber. I am acquainted with Andrew Revene. On the 16th day of March, 1938, I was in his barber shop at about 10:20 o'clock p. m. Mr. John Barton, Mr. Ellis,

Tr. 26 and one or two others were with me. We were called
by a man who had passed his shop. Mr. Revene was
Tr. 28 then doing business in his barber shop. Revene's
barber shop is located in the semi-business district, in
the east part of town.

CROSS EXAMINATION By MR. ASHTON:

I am a barber in Salt Lake City. I have no bar-
ber shop. I work at 349 East 2nd South part time
on Saturday afternoon. My office is in the Labor
Temple. I am Secretary-Treasurer of the Barbers'
Tr. 30 Union. I tried to go in Mr. Revene's barber shop
at 10:20. I tried to go in there but the door was
locked. He came to the door and saw us and locked
the door. The window was open, and we could look
in and see all the things I have testified to.

REDIRECT EXAMINATION By MR. BECK:

Q. How long have you been a barber?

A. Oh, about forty years.

Q. How much of that time in Utah?

Tr. 113 A. All the time except about three or four
months.

Q. Where have you worked in Utah as a
barber?

A. In Salt Lake City, Bingham, Park City and
Tooele. My duties as a business agent take me into
the respective jurisdictions of the State of Utah, all
Tr. 114 except Provo and Utah County. In my experience,
hours of barbering have been open and unlimited in a

good many parts of the State.

Q. All right, when the hours were unlimited how long of a shift did barbers' work?

A. Oh, up as high as twelve o'clock at night and later.

Q. From when to twelve o'clock?

A. From eight o'clock, sometimes seven to twelve o'clock or after at night.

Tr. 115 Q. Now, from your observation, what effect would those long shifts have at that time upon the efficeincy and exactitude and vigilance of the barber?

A. Well, it had a very deteriorating effect. He became very tired through long service and the long strain of being in the shop and the technical work that he had to do. Barbering is technical work, it is a constant strain on a person handling a razor, the sharpest of all tools and in working on individuals you must use extra care.

Q. Would he become careless?

A. Yes.

Q. Would he resort to anything to pep him up?

A. Yes.

Q. Well what?

A. Use of tobacco, liquor, beer, and things like that.

Q. Now what effect, economical effect, if you know, would those conditions have upon the barber shop that only worked from eight in the morn-

ing until six at night, six-thirty?

Tr. 116 A. It made that shop, the owners, the barbers therein feel that they had to do the same thing in order to compete with the shop that was running eight hours and it would necessitate them staying open and forcing them to work longer than they really wanted to work.

Q. During that time, what effect would that have on the barber who was married and had a family in relation to being home?

A. As a matter of fact it wouldn't give him a chance to become acquainted with his family as he should, his children wouldn't get his proper association, or his wife.

Q. What time for recreation would a barber have at the time he was working those long shifts?

A. Wouldn't have time for recreation.

Q. In other words, if he opened the shop in the morning at eight o'clock and closed at eight or nine at night he would never have any daytime period to spend in his home at all?

A. No.

Q. So if he had children who went to school unless it was on a Sunday, where he slept in all day, they would never see him, is that about it?

A. That is about it.

Tr. 117 I have observed customers in barber shops who had alopecia, sycosis, impetigo, scrofula, eczema, and

other contagious and infectious diseases. A barber has to be alert and diligent to discover those things, because these diseases are spread from barber shops. When a person gets a shave in a barber shop the barber not only takes off the hair on the face, but a portion of the skin is also taken off each time by the sharp razor, so if on the face there is impetigo or alopecia or any of the other diseases connected with dermatology, this is opened up when a person gets a shave, and gets on the barber's towels and the brush, and unless the brush and the towel are properly disinfected, somebody else will get the disease.

Tr. 118 My experience has been that when one barber shop in one neighborhood in the metropolitan area extends the hours of closing, it makes it necessary for the other barber to do the same thing or he loses business. The tendency is that when a small percentage of barbers decide to stay open until eight or nine o'clock at night on weekdays for the others to do likewise in self-defense.

Q. So if there wasn't some regulation concerning closing hours of a barber shop all of them would revert back to the closing hours maintained before there were such regulations?

A. They sure would.

CROSS EXAMINATION By MR. ASHTON:

Tr. 119 I am fairly well acquainted with barbering throughout the state. I am not acquainted at Logan,

it is another organization. I have nothing to do with it. I am somewhat acquainted in Provo. They have a fair trades practice law in Provo covering closing. All barber shops in Salt Lake City did not stay open until twelve o'clock before this ordinance was passed. In most cases, most little towns have some agreement among themselves. All union barbers close at five or six o'clock.

REDIRECT EXAMINATION By MR. IRVINE:

Tr. 120 The thing that closes the barber shops at Provo and Logan is the Union. Before the shops in Provo and Logan were unionized they stayed open with unlimited hours.

MERWYN ELLIS testified in behalf of the plaintiff as follows:

DIRECT EXAMINATION By MR. IRVINE:

Tr. 90 I operate a one-chair barber shop. I have been
Tr. 91 in Sugar House nine and a half years. I am open
from eight to six on weekdays and from eight to
Tr. 96 seven on Saturdays and days preceding holidays. The
Tr. 97 average suburban shop receives a lot more children
than a shop on Main Street. Most women go down
town to have their work done. I have seen persons
suffering with diseases come into my shop, but I re-
fused to serve them. I can recognize ringworm when
I see it.

Tr. 98 CROSS EXAMINATION By MR. ASHTON:

Tr. 99 I serve quite a few business men in Sugarhouse.

I believe the inspector or the beauty operator inspector comes to my shop at least once a year. The beauty shop in my barber shop is run by somebody else. I close at seven o'clock but it doesn't mean I am through at seven.

Tr. 100 REDIRECT EXAMINATION By MR. IRVINE

Business comes into my shop at all hours. For instance, I noticed some of the other shops coming down. The shop on 7th East and 21st South was busy; the one at 5th East and 21st South, the one at 5th East and 19th South were busy. I don't believe I noticed any others. These were all strictly residence, single chair barber shops.

Tr. 101 Q. Have you had any experience competing with shops that remain open after six P. M. after the time that you close?

A. Yes.

Q. How long past has that been?

A. When I first went to Sugarhouse I had been in the habit of observing the hours that were in practice in most of the shops then which was eight in the morning until six in the evening, on Saturday's eight to eight. I went along that way until I found I was losing my business to competitors taking advantage of those hours, so to save myself I had to do the same as they did.

Tr. 102 Q. You found if the shops were open after yours you would lose your business, or you would

have to continue your hours to the same as they had?

E. B. HARRISON testified in behalf of the plaintiff as follows:

DIRECT EXAMINATION By MR. BECK:

I have lived in Salt Lake City since the year 1909. I have charge of the enforcement of the laws pertaining to the Department of Registration including sanitary requirements of different trades and professions and occupations and of the enforcement of the license law. I have been with the Department of Registration since the organization of the Department in 1921. At that time I was president of the State Board of Barbers and had been from the first day of April, 1917, until that time, and have continued to hold a chairmanship on the State Barber Board from then until now. My official title is the law enforcing officer of the Department of Registration. Prior to that I was in the barber business. I began in May of the year 1911. For 28 years I have been constantly in touch with the barber business in the State of Utah and more particularly in Salt Lake City, and County. The duties of the president of the Barber Board are to conduct examinations and to inspect barber shops and direct inspection of them with respect to sanitary and sterilization conditions. Dr. Beatie objected to diluted formaldehyde and required barbers to use it straight. Formaldehyde escapes quickly if left open. All bar-

ber's tools must be sterilized. We discourage the use of brushes, but combs can be left in a solution of formaldehyde or lysol. A brush should be thoroughly washed in good soap and left in a solution of chloral tablets; then it should remain in a dry cabinet except when used. If a brush becomes infected with

Tr. 39 syphillis or some form of alopecia, the only way to disinfect it is to burn it up, and that pertains both to hairbrushes and shaving brushes. All barbers' linen should come from a recognized laundry that do dis-

Tr. 41 infecting of linen. We inspect barber shops to protect the public from the spread of disease. Before the barber law was passed, barber shops were in a demoralized condition. Barber shop conditions have improved a great deal within the last ten or fifteen

Tr. 42 years. The regular inspection of barber shops compels the proper use of clean sanitary linen, water, soap, and the various instruments the barber uses; otherwise, the barber doesn't use sanitary equipment. There are no germs spread from one customer to another in a sanitary barber shop. If a customer has gonorrhea eye it is very easily spread in a barber shop. Conditions are just right to spread this disease in a barber shop. It has been my experience that

Tr. 43 impetigo and vacuoles, scrofula or eczema, and other diseases have spread from barber shops. Rigid inspection of barber shops stops at least 90% of the various diseases that spread from barber shops.

Tr. 45 Q. Is there any machinery set up within the act itself or enforcement division of the act to inspect barber shops after six?

A. No.

Q. Or before eight in the mornnig?

A. No, sir.

Q. Is it practical, has it ever been practical to inspect barber shops after six o'clock at night?

A. No, sir.

Q. Now is it possible to inspect barber shops in this state after six o'clock at night or before eight o'clock in the morning without a substantial increase in appropriation or increase in staff?

A. It could not be done.

Tr. 46 Before May, during the year 1918, practically all of the barber shops stayed open after six o'clock. I doubt if over 3% of the barber shops stay open after six o'clock now, and particularly since 1933

Tr. 47 and 1934. N. R. A. had a great influence on those people closing in 1933 and 1934. Prior to 1918 the large percentage of the shops stayed open until nine o'clock and others stayed open later than that. They would open at seven o'clock in the morning in 1918 and prior thereto and on Saturday nights would stay open as long as customers would come in up to twelve o'clock midnight, until after the saloons closed.

Tr. 48 Q. What effect would those hours from seven o'clock in the morning until usually nine at night

and nights before holidays it was later and Saturday nights have upon the barber with respect to his services and sanitary conditions?

A. He became very fatigued, not interested in his work or his services or his patrons, very careless in his habits, leg worn the same as hands. You know it takes several hundred motions of the hand to cut a head of hair. He became very fatigued and in so doing, of course, he lost his ambition to be as neat and painstaking as a fresh man would be when he would go to work, or work an average working day.

Q. Tell us, was there any difference in the spread of disease emitting from the barber shops during the time barber shops stayed open from seven o'clock in the morning until nine or ten and midnight?

A. A great difference, yes.

Tr. 49 Q. What do you mean by a great difference?

A. I mean there was a great deal more in those days than there is now.

Q. A great deal more what?

A. A spread of different diseases.

Q. Emitting from barber shops?

A. Yes, sir.

Tr. 50 A single chair shop can't compete with a multiple chair shop running in relays. The single chair barber shop in order to hold business has got to stay open the same number of hours as a multiple chair shop. He has got to do it to hold his business.

Tr. 52 Q. Then the tendency in subdivisions of the city is to stay open until midnight if necessary?

A. No other way to compete with competition.

Q. Put it in the ugly form, that would be the way to keep the other fellow from stealing his business?

A. That is just what it would be.

CROSS EXAMINATION By MR. ASHTON:

I am in charge of the enforcement of sanitation and inspection, and law enforcement officer of the Department of Registration. Inspection of physicians is usually made on complaint. We have dentists, barbers, beauty operators, drug stores, and chiropo-

Tr. 53 dists. We try to make regular inspections. Mr. Golding assists me. A young lady also assists with

Tr. 54 beauty parlors. It keeps us quite busy. Sometimes we don't visit a barber shop more than once a year, If a barber is not conducting his business in a proper manner, we take his license away. Some beauty parlors stay open after six o'clock. No law says they

Tr. 55 can't stay open. As people learn more about sanitation and civilization they become more sanitary. If all people were properly educated in sanitary measures they would be more sanitary. The majority of in-

Tr. 60 spections close at five o'clock.

REDIRECT EXAMINATION By MR. BECK:

Tr. 61 Muscular effort, worry, and fatigue reduce the energy of the barber, and worry about getting busi-

ness is the worst—the anxiety of competition. We try to make periodic inspections of barber shops. The minute a complaint of a barber shop comes in, if it is within our power, we check it immediately.

Tr. 65 Q. What is the result of a barber that is tired through long hours of working upon a customer whom he has never seen before with relation to his fitness to seek out and discover any disease on the strange patient?

A. Of course, a tired person would be more or less lax in the performance of his duty the same in that profession as in any other profession.

RECROSS EXAMINATION By MR. ASHTON:

Tr. 75 My hours of work are from nine until five, ordinarily. I don't ordinarily inspect between five and six.

REDIRECT EXAMINATION By MR. BECK:

Tr. 81 There are 231 barber shops in Salt Lake City. There are about 175 dental offices. The rules and regulations of the Department of Registration in

Tr. 82 Utah are reduced to writing. There is a city ordinance in Ogden practically the same as the Salt Lake City barber ordinance. It was adopted a few months after our ordinance was adopted here. Customers come in the neighborhood barber shops about the

Tr. 83 same time as they do in the downtown barber shops, except, if anything, you find more women and children coming into the neighborhood barber shop in

the forenoon than you have men customers coming in barber shops in the business district.

N. W. PICKETT testified on behalf of the plaintiff as follows:

DIRECT EXAMINATION By MR. IRVINE:

Tr. 85 I am Chief Sanitarian for the Utah State Board
of Health. I direct the sanitary program throughout
the state. We usually visit barber shops on a com-
Tr. 86 plaint that comes direct to our office. I have seen
a good deal of impetigo. Impetigo is an infectious,
Tr. 87 not a contagious, disease.

CROSS EXAMINATION By MR. ASHTON:

Tr. 88 We don't make regular inspections of barber
shops. It is usually on complaint. I would say sani-
Tr. 89 tary conditions in the average barber shop is as good
in other towns as it is in Salt Lake City.

JOHN H. BARTON testified on behalf of the plaintiff as follows:

Tr. 104 DIRECT EXAMINATION By MR. IRVINE:

Tr. 105 I am a barber. I work in the Walker Bank
Building Barber Shop at Second South and Main
Street in the center of the business district. I am a
journeyman barber. There are six barbers employed
in our shop. There are seven chairs. We serve
mostly business and professional men. I am familiar
with the barber shops in the business area of Salt
Tr. 109 Lake City. The shop is open from eight until six
o'clock at night. It is a union shop. All the barbers

there are members of the union. The customary opening and closing hours of those barber shops is from eight in the morning until six at night. We occasionally are asked to serve customers suffering from infectious and contagious diseases, and we refuse to work on them and refer them to a doctor.

Tr.110

Tr.111 Our work is rather constant—it is very much the same.

CROSS EXAMINATION By MR. ASHTON:

I am a Union Barber. I do not know how often our shop is inspected. I have seen the inspector once in the last year.

REDIRECT EXAMINATION By MR. IRVINE:

I have been in the barber business for twenty-five years—twenty years in Salt Lake City.

E. J. SQUIRES testified on behalf of the plaintiff as follows:

DIRECT EXAMINATION By MR. IRVINE:

Tr. 123 I operate a barber shop at 918 East 9th South. It is a small one-man shop. I have been engaged in the barber business in Salt Lake City for thirty-four

Tr.124 years. My first experience in Salt Lake City, barbers worked until about eleven-thirty on Saturdays and eight through the week. The sanitary conditions during those days were terrible.

Q. Tell what was wrong with them?

A. There seemed to be a great deal of skin infection; we paid no attention to skin conditions; we

were tired, worn out, worked long hours, didn't think about those things.

Q. Now, with the reduction of hours in the past years and the providing of inspection services and education of this by the State, what has been the result of the disease condition that existed at that time?

Tr.125 A. The thing seemed to me to go hand in hand; when a man had better hours, felt better, had more self respect, he felt more like maintaining a sanitary condition and feeling more like he belonged to a profession.

There seems to be very little skin infection among the shops because we are more careful, we feel different about the business, we are more conscious of the condition of a better sanitary condition. A good many years ago when I started in some barber shops we worked on Sunday, there were long hours, broke down the health and morale of the barbers. We obtained a Sunday law and I helped get evidence against some who broke the law and that law is on the statute books today, a barber cannot

Tr.126 barber on Sundays. A man who only works six days a week is a better man for it; he runs a cleaner shop. When a man operates a barber shop when other shops are not customarily open, there is a tendency on the part of such individuals to save money by not using a sufficient amount of linen and steril-

ization. He doesn't compete on a fair basis with the rest of the barbers.

I have worked in four different barber shops. I know about 90% of the barbers cooperate and would cooperate under the NRA on hours. There is no doubt about it.

CROSS EXAMINATION By MR. ASHTON:

Tr. 127 I don't belong to the union. My barber shop is at the intersection of Ninth South and Ninth East.

F. J. SLADE testified on behalf of the plaintiff as follows:

DIRECT EXAMINATION By MR. BECK:

Tr. 129 I am a master barber in the New Grand Barber Shop. I have been a barber for seventeen years.

Tr.130 There are four barbers in my shop. I have been in a metropolitan area for seven years

Q. Have you ever made observation to determine what happens to barbers that work over the usual shift with respect to fatigue?

A. It has been my experience through observation in my own shop and in cooperation with others, a barber that works over a specified length of time becomes reversant, a little indolent and jittery.

Q. It has been your actual experience that a barber who works longer than the regulation shift, the tendency is to become negligent, indolent and reversant?

A. Correct.

Q. Now that also pertains not only with his work, but it—can you say whether or not that condition does also pertain with respect to the observance and compliance with health regulations as well as the degree of care with his work?

A. Yes, it does.

A barber, after seven or eight hours of work, is going to have a stimulant either by way of an alcoholic beverage or strong coffee or something of that sort to stimulate him, keep him going at the speed that must be maintained in a first class barber shop. I know that alopecia is scattered and spread in barber shops. I know this absolutely. There is a mental strain in a barber shop that makes you jittery and unsteady. The amount of strokes it takes to cut a man's hair and shave him is unbelievable.

Q. Do you know how many average clips is made in cutting an average head of hair?

A. At least one thousand.

ROBERT L. ROBERTS testified on behalf of the plaintiff as follows:

DIRECT EXAMINATION By MR. BECK:

I have been a barber for thirty years. I am employed at 314 East 1st South. I ran the Wilson Hotel Barber Shop for nine years. It is a five chair barber shop. A man can't work efficiently in a barber shop over eight hours, and he can't efficiently observe the rules of sanitation. Long hours makes

a barber careless to the extent that he hates to see a man come into his shop. When one barber shop stays open later than another the one staying open Tr.135 takes the other man's business, and the chiseling barber gets a lost customer, and the only way the barber who keeps regular hours can recapture his business is to work long hours himself and compete against the chiseler.

ANDREW REVENE testified on behalf of himself as follows:

DIRECT EXAMINATION By MR. ASHTON:

Tr. 139 I am a Norwegian by birth. I have lived in this country since 1920. I have practiced barbering since 1925. My shop is at 466 East 2nd South. I have Tr.140 been in that shop for ten years. I am not a member of the Union. I open for business around twelve o'clock. I live in the back of the shop, so that is why I am in there and clean up before twelve o'clock. I do not have customers before twelve o'clock very often. I make about \$5.00 on an average afternoon. Most of that comes in after 3:30 o'clock. I never gets to a point where I hate to see a customer come in. Tr.141 When the law went into effect I stayed open at night until about eight o'clock. I don't drink whiskey, wine, coffee, or tea. I find my business a rather Tr.142 easy life. I have in my shop disinfectants. My shop was last inspected a year and a half ago. Before that it was five years before my shop was inspected. My

customers are mostly children They quit coming Tr.143 in around six o'clock. My customers are mostly regular. I am a licensed barber and I take all the sanitary precautions: I disinfect all my instruments. When a person comes in with an infected face, I tell them I am sorry and turn them out.

MR. ASHTON: Now, Your Honor, I believe Mr. Edward—T. D. Jones, if he were called to testify would testify he owns a barber shop at 105 Lucy Avenue in a residential district; that his barber shop is customarily open at 3:30 in the afternoon and an inspector hasn't visited his shop for a period of one year.

MR. IRVINE: We so stipulate he would so testify.

(Title of Court and Cause.)

ASSIGNMENTS OF ERROR

Comes now the plaintiff and appellant above named and assigns the following errors occurring at the trial of this cause before the Honorable M. J. Bronson, one of the judges of the District Court of the Third Judicial District, in and for Salt Lake County, State of Utah, which errors this plaintiff relies upon for a reversal of the judgment in this cause.

1. The District Court erred in its ruling sustaining defendant's demurrer to plaintiff's complaint.

2. The District Court erred in its ruling dismissing plaintiff's complaint.

3. The District Court erred in its ruling discharging the plaintiff.

4. The District Court erred in exonerating defendant's bondsmen.

WHEREFORE, this appeal, and plaintiff respectfully asks this honorable Court that the foregoing be considered as its assignments of error and that the judgment and decision appealed from be reversed.

E. RAY CHRISTENSEN,
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CLARENCE M. BECK,
Attorneys for Plaintiff and Appellant.

(Duly served and filed.)

