01356

GEORGIA,)
(
FULTON COUNTY.)

BE IT REMEMBERED that heretofore, to-wit, on the _____day of July, 1926, and at the July term 1926, in the Superior Court of Fulton County, Georgia, his Honor Judge John D. Humphries, one of the Judges of said court, presiding, there came on to be heard the case of R. C. Chaires, Berry Robinson, H. Entzminger, M. H. Dodson, E. G. Limbach, Bob Bates, C. F. Morris, W. p. Hollis, Frank Collins, A. F. Herndon, Howard Pitts, E. S. Jones, C. A. Faison, A. Nash, and Benjamin Green, and by way of intervention, S. E. Pace v. City of Atlanta; the said hearing being had on the rule nisi for an interlocutory injunction.

Be it further remembered that at said hearing the plaintiffs introduced the following evidence: The sworn petition and amendments, and the sworn intervention, were read as affidavits and were allowed as affidavits for all statements of fact contained therein.

The plaintiff introduced the affidavit of R. E. Chaires, in substance as follows:

"Affiant has a lease on his shop running for five (5) years and beginning January 1, 1925, and ending December 31, 1929, for which he agreed to pay the landlord Five Hundred ($500) Dollars per month.

" Affiant says that the equipment in his shop consisting of barber chairs, mirrows, plumbing and fixtures, workstands for barbers, a cash-stand and cash-register, other chairs, sterilizers for barbers' tools, linoleum for the floor, receptacles for soiled linen, linen on hand, electric fans, electric fixtures, advertising barber-pole, shoe-shine stand, hat-racks, wall-paper, one iron safe, a cabinet for supplies and a heater, cost approximately FOUR THOUSAND ($4000) Dollars or more, and affiant says that when he bought his equipment and took his lease the ordinance attached by the petitioners in this case was not pending before the City Council, and so far as affiant knows, its passage was not then contemplated.

Affiant says that all the plaintiffs in this case have shops opening on the street on the ground floor and that most, though not all, the barber shops in Atlanta are on the ground floor, and all of the plaintiffs have money invested in their equipment and rent their places of business and have leases expiring at different times, and operate generally under the same conditions as the conditions under which affiant operates.

Affiant says that his shop has been running at the same location at which it is now being run for twenty-five (25) years.

Affiant says that he employs only skilful and well known barbers and that the barbers he

"employs have regular lines of customers, have been in the business with affiant for from three to ten years; keep themselves neatly dressed in white linen jackets, keep their tools in sanitary condition, and do everything they can to attract the best class of white customers.

Affiant says that he does not belong to the barbers' union, and none of the plaintiffs, and no colored barbers belong to it, but many of the barber-shops in the City of Atlanta that employ white barbers do belong to the barbers' union, and that practically all the barbers' Union shops employing union barbers, have for a long time, beginning some time prior to the adoption of said ordinance, been closing at 7:00 o'clock, in the evening, except on Saturdays, and on Saturdays they have been closing at a later hour. None of the union barber shops have made complaint in the courts against the ordinance, which is attacked in the above stated cause by the plaintiffs.

Affiant says that his shop closes at 8:00 o'clock in the evening on all week days except Saturdays, unless his business requires him to remain open later, and such is often the case, and on Saturdays he closes his shop at 12:00 o'clock at night, and that he observes these hours because the convenience of his white customers requires it. Affiant says that a number of business

"men in Atlanta and in its vicinity cannot get to a shop until 7:00 o'clock P. M. or later, and that many of them. notably those who work in such stores as the Rogers and Piggly-Wiggly stores, the Atlantic and Pacific Tea Company and the Cash Grocery Company stores, cannot get to barber shops to have their barbering done until after 9:00 o'clock on Saturday nights, and until after 7:00 o'clock on other week day nights, for the reason that such stores stay open until 9:00 o'clock on Saturday nights and until 7:00 o'clock other nights, and these stores are quite numerous and employ quite a number of men, and affiant has a number of customers who work in such stores and who patronize affiant after 9:00 P.M. on Saturdays and after 7:00 o'clock other nights of the week.

The only reason affiant keeps his shop open after 9:00 o'clock on Saturdays and after 7:00 o'clock on other week days is because many of the customers of his shop cannot get to the shop until after 9:00 o'clock on Saturdays and until after 7:00 o'clock on other week days.

Affiant says that his place of business is on the ground floor on Marietta Street.

Affiant further says that between the 21st day of May, 1926, and July 10, 1926, he has taken in at his shop after 9:00 o'clock on Saturday nights and after 7:00 o'clock P.M. on other week days, the sum of $320.65 on account of barbering done therein for his customers after said hours.

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" Affiant says that if all the children under 14 years of age are required to abandon shops in which colored barbers are employed, that they will get accustomed to other barbers and the business of the colored barbers will thereby be destroyed in the course of time.

If children under 14 years of age are permitted to continue to patronize their colored barbers, the chances are that such a large percentage of them will partonize the same barbers after they are more than 14 years old as to make the colored barber shops profitable, and enable them to pay the high rents that they have to pay in order to get satisfactory locations for their shops.

Colored barbers charge for hair cuts 25 cents in some shops and 35 cents in other shops, and for shaves they charge 15 cents, and for shampoos they charge 35 cents in some shops and 50 cents in others, for massages they charge 35 cents in some shops and 50 cents in others, and union barber shops charge more for all these services than is charged in colored barber shops operated by plaintiffs.

Affiant says that he and all the plaintiffs have always done work for white children under 14 years of age, consisting almost nearly of hair cutting and that many customers in all shops among the men are those who began to have their work done in the same shops when they were under 14 years of age.

Affiant says there are ten barbers in his shop, including himself, as follows:

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J. H. Davis, who has been working in affiant's shop for eight years.

Dave Weaver, who has worked in affiant's shop for about eight years.

J. V. Johnson, who has worked in affiant's shop about six years.

J. S. Speer, who has worked in affiant's shop about twelve years.

John M. Evans, who has worked in affiant's shop about six years.

Jack Johnson, who has worked in affiant's shop about eight years.

W. H. Fleming, who has worked in affiant's shop about eight or ten years.

Irving Armor, who has worked in affiant's shop off and on for about ten years, and who has now been in affiant's shop continuously for about three years.

Affiant's son, Richard C. Chaires, Jr., who has worked in affiant's shop continuously about 14 years, not excluding, however, about 18 months spent by him in France during the late war as a soldier in the United States Army.

There are in the City of Atlanta a number of Rogers Stores, Atlantic & Pacific Tea Company stores, Piggly-Wiggly stores, Cash Grocery stores, in all of which quite a number of men are employed, and all these shops close at 7:00 o'clock P.M., during the week, except Saturdays, and on Saturdays they close

" from 9:00 to 10:00 o'clock P. M., and a number of employees from such stores patronize affiant and his and other shops after the hours named.

Affiant says that he himself has done Mr. H. C. Vaughn's barbering for a number of years, and his three sons and their children now habitually have their barbering done in affiant's shop, and affiant has done the barbering for a long time for Mr. J. B. Carr and his son, and his son's children, and his daughter's children now have their barbering done in affiant's shop; and his son's children now have their barbering done in affiant's shop, and affiant has done the barbering for a long time for Mr. W. H. Terry, and his son and his son's children, and his daughter's children now have their barbering done in affiant's shop. And affiant has done the barbering for Dr. W. J. Auten and his son, and his son's children, and his daughter's children have their barbering done in affiant's shop. Also, affiant has done the barbering for Mr. John Lagomarsino and his son, and his son's children now have their barbering done in affiant's sho, and the children referred to in this paragraph are from three years of age up.

Affiant says that there are a number of barber-shops in the office buildings of the City, all union shops, or white shops, and in some cases, these barber shops are unstairs, and in nearly all cases the patrons of shops in office buildings are the tenants of the buildings themselves, and the tenants are practically

0363

all gone after 7:00 o'clock at night, and hence these particular barber shops have nothing to do after 7:00 o'clock.

Affiant further says that there is a barber shop at the Atlanta Terminal Station, run by white people and employing only white barbers, which serves the convenience of incoming and outgoing white passengers, and that after the passage of the ordinance complained of in this case, the Atlanta Terminal Company barber shop applied for and obtained, or was promised by the Mayor of Atlanta, a special permit to remain open after 9:00 o'clock on Saturday nights and after 7:00 o'clock on other nights of the week, because the demands of the traveling public required it, and the Mayor issued or promised to issue such a permit to that barber shop.

Affiant says that there are many shoe shining shops all opening on the streets in the City of Atlanta, in which the shiners are colored men and boys, and in which the shoes of white men and women, and young girls and boys are polished, All the shoe shiners in Atlanta at this time are colored. There are also many soda water founts on the ground floor, the same as barber shops, and there are many clothes pressing shops, cafes, drug-stores and filling stations all over the City, employing colored help, and many such stores and shops in the suburban parts of the City where the police protection is not as complete as it is in

" restaurants, are required to stay on duty until after 7:00 o'clock at night, and hence cannot get away to get their hair cut or to get a shampoo or a bath at a barber shop if the barber shops are required to close at 7:00 o'clock. There are many barber shops in Atlanta run for colored patrons."

The plaintiff introduced the affidavit of Viola Herndon, in substance as follows:

"She is manager and cashier of A. P. Herndon barber shop at No. 66 Peachtree Street, Atlanta, Georgia, and has been such for longer than two years last past, and it is and has been her duty during said two years and longer to check up the receipts and disbursements of the other shops in which said Herndon is interested, that is, the shops at No. 35 Marietta Street and No. 142 Peachtree Street, Atlanta, Georgia, and that by the shop at 66 Peachtree Street the money taken in for barbering, shoe shining and baths after seven P.M. on week days other than Saturdays, since May 15, 1926, will average upward of $11 per day, and at the 142 Peachtree Street shop the average is more than 66 Peachtree Street,and at the No. 35 Marietta Street shop the average is in excess of $12 per day and the 66 Peachtree Street shop has taken in after nine o'clock P.M. on each Saturday since May 15, 1926, in excess of $40, and each of said other shops has taken in on each Saturday night

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" after nine o'clock since May 15, 1926, in excess of $25. The business of all said shops is better during the fall, winter and spring months after said hours, and before than during the summer months. The pressing clubs in each of said shops also take in money after nine P.M. on Saturday nights and after 7 p. m. other nights of the week.

The fixtures in the shop at 66 Peachtree Street are worth at least $1200 and the fixtures at 35 Marietta Street are worth at least $600 and at No. 142 Peachtree Street they are worth at least $500.

The lease at No. 66 Peachtree Street runs seven years from January 1, 1926, and at No. 35 Marietta Street the lease runs about two years and at No. 142 Peachtree Street the lease runs about three years from this time."

The plaintiffs introduced the City Code containing the ordinances of the City of Atlanta, which was admitted in evidence as a correct code of the City ordinances. The said code is not copied in full as it is very lengthy; the only material portions of it are summarized as follows:

The closing hours of pool rooms, junk shops, pawn brokers, curb service of soda founts and sales of newspapers by children, and the closing of the City Hall offices, are fixed at the hours shown in the plaintiff's pleadings. There are no other ordinances requiring closing hours except those named.

The plaintiffs also introduced their licenses

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or registration certificates as barbers, under the Act of 1914 of the General Assembly. It is unnecessary to copy these in full, they merely being registration certificates for the year 1925, according to said act.

Plaintiff thereupon closed.

The defendant introduced certified copy of the Ordinance which is attacked in this case, copy of which is as follows:

AN ORDINANCE providing that no colored barber shall serve, as a barber, white women, white girls, and children under 14 years of age, and also closing all barber shops during the week days, except on Saturdays, at 7 o'clock P. M., and on Saturdays at 9 0'clock P. M., and for other purposes.

Be it ordained by the Mayor and General Council of the City of Atlanta as follows:

Section 1. Hereafter no colored barbers shall serve, as a barber, white women, white girls or children under the age of fourteen years old, meaning by this doing any of the work such as barbers ordinarily perform and as defined by the Statute of the State of Georgia.

Section 2. All barber shops in the City of Atlanta shall hereafter be closed, during week days, at 7 o'clock P. M. except on Saturdays when they shall close at 9 o'clock P.M.

Section 3. Any barber, their agent or employees or the manager of any barber shop, violating either of the foregoing sections shall be deemed guilty of an offense and on conviction thereof in the Recorder's court shall be punished by a fine not exceeding $200.00 or sentenced to work on the public works of the City for not exceeding thirty days, either or both penalties to be inflicted in the discretion of the Recorder.

Section 4. That all ordinances and parts of ordinances in conflict with this ordinance be and the same are hereby repealed.

Adopted May 15th, 1926.
Approved May 16th, 1926.
Walter A. Sims, Mayor.

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The defendant introduced in evidence copy of amendment to the aforesaid ordinance which amendment is as follows:

WHEREAS, an ordinance was passed, with reference to Barber Shops, which ordi ance was dated February 15, 1926, and same has been attacked, among other grounds, upon the ground that Section Two (2), which fixes the closing hours, is not certain; and it is desired to make the terms of said Section certain and definite, so as to relieve same from this particular criticism.

Therefore, be it ordained by the Mayor and General Council, as follows:

1. That said ordinance be amended by adding to Section Two (2) thereof the following:

After closing during the week days at seven P. M. same shall remain closed during the night and not re-opened before five-thirty A. M. of the following day, except as to Saturdays; and after same are closed at nine o'clock P. M. on Saturdays, same shall remain closed until five-thirty A. M. of the following Monday; so that said Section, as so amended, shall read as follows:

Section 2. All Barber Shops in the City of Atlanta shall hereafter be closed during week days at seven o'clock P. M., except on Saturdays, when they shall close at nine o'clock P. M.

After closing during the week days at seven P. M. same shall remain closed during the night and not re-opened before five-thirty A. M. of the following day, except as to Saturdays; and after same are closed at nine o'clock P. M. on Saturdays same shall remain closed until five-thirty A. M. of the following Monday.

Section 2. That all ordinances and parts of ordinances in conflict with this ordinance be and the same are hereby repealed.

Adopted April 5th, 1926.
Approved April 6th, 1926.
Walter A. Sims, Mayor.

The defendant introduced certified copy of a resolution of the General Council of the City of Atlanta in regard to the aforesaid ordinance and amendment thereto, which resolution is as follows:

BE IT RESOLVED BY THE GENERAL COUNCIL OF THE CITY OF ATLANTA, AS FOLLOWS:

That whereas certain persons have appeared in Fulton Superior Court, and petitioned for injunction to prevent the enforcement of a certain ordinance therein referred to, and known as the barber ordinance;

And whereas it is charged in said bill that said ordinance is a denial of due process of law, and a denial of the equal protection of the laws to certain classes of citizens;

NOW BE IT RESOLVED by said General Council that we undertake to express no opinion as to the legality and constitutional right of the City of Atlanta to pass said ordinance. That is a question for the courts to pass upon, and we disclaim any purpose or desire to influence the judgment of the courts on that question.

BE IT FURTHER RESOLVED, however, that, if the City of Atlanta has had delegated to it by law a sufficient police authority to warrant it in legislating on the subject, we desire it made known officially to the courts that said ordinance was passed according to the judgment of this body, and after due consideration and investigation, as to what is necessary for the public welfare, the public morals, and the public peace, and with no purpose in view to discriminate against or in favor of any class of persons.

The defendant introduced the affidavit of Will Quinton in substance as follows:

Affiant is a negro man about twenty-six years old and has worked in a barber shop at 180 South Pryor Street for a long time and has worked in barber shops ever since he was a boy. Affiant has on many occasions had white people to come to the barber shop where he was working and employ affiant to buy liquor for them. Affiant does not care to state when or for whom he bought, or from whom he bought the liquor.

The defendant introduced the affidavit of H. C. Newton, in substance as follows:

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Affiant is an officer in the City of Atlanta and has been such for many years, and has seen a great deal of illicit dealing in intoxicating liquors.

Affiant submits the following instances which came under his personal observation and of which he has personal knowledge:-

On October 23, 1925, D. L. Humphrey had and possessed a gallon of corn whiskey in a bottle at 427 Spring Street, Atlanta, Georgia, a barber shop, Humphrey being himself a barber, said to be white. Affiant took out an accusation against the said Humphrey in that matter on October 27, 1925, Case No. 77,005, in Criminal Court of Atlanta, and said Humphrey pleaded guilty thereto on December 17, 1925.

On January 18, 1926, Charles Falline a negro barber, had and possessed a bottle of corn whiskey at a barber shop at No. 36 No. Forsyth Street, Atlanta, Georgia. Affiant took out an accusation against said Falline on January 20, and said Falline pleaded guilty January 25, 1926.

The defendant introduced the affidavit of E. S. Acree, which was in substance, as follows:

Affiant is a police officer in the City of Atlanta. Affiant knows that Frank Jackson, a bootblack in a barber shop sold whiskey at a barber shop in the Peters Building, Atlanta, Georgia, October 5, 1925. Affiant sued out an accusation against said Jackson in the Criminal Court of Atlanta on October 6, 1925, No. 76,679, and said Jackson pleaded guilty hereto on February 8, 1926. Affiant took another accusation against said Jackson on the same day for the possession of corn whiskey in a barber shop in the Peters Building, to wit, No. 76,680, and Jackson pleaded guilty thereto February 8, 1926.

August 5, 1925, Woodson Jackson, a barber was caught in possession of nine gallons of corn whiskey in cans at a barber shop at No. 226 Houston Street, Atlanta, Georgia. Affiant sued out an accusation against said Woodson Jackson, No. 75,705, Criminal Court of Atlanta, and said Jackson was convicted by the jury and sentenced to pay a fine or go to the chain gang for twelve months and afterwards forfeited his bond.

Defendant introduced the affidavit of J. A. Hamilton, in substance as follows:

Affiant is a police officer in the City of Atlanta, Georgia. He has read the affidavit of Officer H. C. Newton in this matter and agrees with same.

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Defendant introduced the affidavit of R. H. McLain in substance as follows:

Affiant is a police officer in the City of Atlanta and has considerable knowledge about violation of the liquor laws in said City. Affiant has read the affidavit of H. C. Newton, prepared for use in this cause, and agrees with the statements therein.

On September 14, 1925, affiant took out an accusation in the Criminal Court of Atlanta against Steve Poole, a negro barber, case No. 76,219, charging the said Poole with having possession of a bottle of corn whiskey at a barber shop at 526 Decatur Street, Atlanta, Georgia. Defendant pleaded guilty thereto on November 19, 1925.

Defendant introduced certified copies of the following accusations in the Criminal Court of Atlanta:

Case No. 77,005, in which D. L. Humphrey was accused of having, controlling and possessing spirituous and intoxicating liquor, to wit, one gallon of corn whiskey in a bottle at No. 427 Spring Street, for which the said D. L. Humphrey was fined the sum of $35.00 or four months. No statement is contained in the accusation as to the time of day at which the offense was committed.

Case No. 78,292, in which Charles Falline was accused of having, controlling and possessing spirituous and intoxicating liquor, to wit, one-half pint of corn whiskey in a bottle at No. 36 North Forsyth Street, Atlanta, Georgia, on January 18, 1926. Said Falline was sentenced to pay a fine of $40.00 or four months. There is no statement as to the time of day at which the offense was committed.

01408

STATE OF GEORGIA,

COUNTY OF FULTON.

TO THE SUPERIOR COURT OF SAID COUNTY:

The petition of R. C. Chaires, Berry Robinson, H. Entzminger, M. H. Dodson, E. G. Limbach, Bob Bates, C. F. Morris, W. P. Hollins, Frank Collins, A. F. Herndon, Howard Pitts, E. S. Jones, C. A. Faison, A. Nash and Benj. Green, plaintiffs, bring this bill against the City of Atlanta, defendant, a Municipal Corporation, located in Fulton County, Georgia, and created and existing under the laws of the State of Georgia, complaining say:

1. That said E. G. Limbach and C. F. Morris, are white men, and operate barber shops for white people in which colored barbers are employed, and all the other plaintiffs are colored men, and all of said plaintiffs, except the six last named, own and operate barber shops for white people in which colored barbers are employed, and the six last named plaintiffs are colored barbers, working in barber shops where only white people are served, and all plaintiffs have been engaged either in operating such shops or working in them, in the City of Atlanta for from ten or forty years. Those of plaintiffs who, as aforesaid, work as barbers, depend upon their work for their support, and plaintiffs who own shops have large sums of money invested in them, and some of the owners, who are colored, also do barbering in their shops.

2. The ten first named plaintiffs, own and operate shops and engage barbers to work in them, and they have leases on their shops, running for sometime in the future, on which they are obligated to pay rents in large amounts, to their landlords, and they are likewise, under contract for supplies and equipment, and have large amounts of supplies and equipment on hand, and if their business should be destroyed or so greatly reduced as to make it unprofitable, their losses would be great and tunious.

3. Said plaintiffs who own and operate shops, furnish the supplies and the equipment, except the razors and hair brushes, and the barbers engaged to do the barbering, charge their customers prices that are well known, the non-owning barbers retaining as their

portion, a certain percent of the amounts paid to them by their customers, and the remainder being turned over to the shop-owners to enable them to pay the expenses of operating the shops, and to furnish to them a reasonable compensation for their superintendence and labor in connection with it, and to take care of their investments in the shops, the equipment and the supplies. Each barber has his own chair, and each one has his particular line of customers, and many of them have been doing the barbering for some of their customers for a great number of years. It usually occurs that a father who patronizes a barber will bring or send his children to the same barber to have their barbering work done, and in this way; plaintiffs do the barbering for a great many children under fourteen years of age. And some of the customers of some of the plaintiffs have work done by them because their fathers and grandfathers were customers of the same barbers. If plaintiffs are not permitted to do work for children under fourteen years of age, a great deal of their business will be immediately taken from them, and in a few year practically all of their business will be lost.

4. All the shops owned by plaintiffs are operated in accordance with the laws of Georgia, and the ordinances of the City of Atlanta, are kept in a sanitary condition, are easily accessible to all the authorities of the law, and all the barbers that work in them keep themselves clean and presentable, wear clean white uniforms or clean coats or jackets, are respectful to all persons who visit the shops, and otherwise demean themselves in a way to attract and hold customers.

5. That many of Atlanta's best business man and highest class men in every way, patronize plaintiffs, and have been doing so for a great many years. Indeed, white barbershops, employing all white barbers, were unknown in the City of Atlanta until about twenty-five years ago, and prior thereto, all the barber shops employed colored barbers. The southern people everywhere, until recent times, had all their barbering done by the colored barbers, and this statement also applies to the City of Atlanta. Plaintiffs believe that it would be hard to find a Southern man as much as 30 years of age, who had never had any work doen for him by a colored barber.

6. Un addition to the barbers, young colored men work in the barber shops owned by plaintiffs, and shine the shoes of customers take their coats and wraps and care for them, and do other work that is needed to be done for plaintiff's white customers-- and all plaintiffs customers are white.

7. The barbers and other men who work in plaintiff's barber shops to some extent, control their time, and none of them work constantly without rest, from the time the shops open until they close, and all may have rest when they need it and desire it.

8. Plaintiff's shops and the shops in which all plaintiffs work, have heretofore opened at a reasonable hour in the morning and have closed for the day at about eight P. M., though , on Saturday nights, they have been kept open until twelve o'clock. These hours have been observed because plaintiffs' white customers have required it. It often occurs that customers of plaintiffs are so busy during the day, that they cannot have their barbering done until their days work is ended, and it often occurs, for other reasons, men cannot have such work done until after seven o'clock in the evening, and until after nine o'clock P. M., on Saturdays, and there is no reason why plaintiff's shops and all other barber shops should not be kept open until nine or ten o'clock at night, and until twelve o'clock on Saturday nights, provided the demands of customers require it, and they do require it. Barbering is one of the ordinary occupations, is needed, and there is nothing about it that requires a shop in which it is done, to be opened and closed by law at any different times then other business houses are opened and closed.

9. But recently, to-wit: On the 15th day of February, 1926, the Mayor and Council of the City of Atlanta adopted and ordinance a copy of which is hereto attached, marked Exhibit "A" providing that all barber shops shall close"during week days, at 7 o'clock P. M." and on Saturdays, at 9 o'clock P. M., and further providing that no colored barbers shall serve, as a barber, children under the age of 14 years, "meaning by this, doing any of the work such as barbers ordinarily perform, and as defined by the Statute of the State of Georgia,"

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10. Said ordinance containes other prohibitions, not necessary to be herein mentioned. And it provides that any barber, their agents or employees, or the manager of any barber shop violating it, shall be punished by a fine, not exceeding $200.00 or sentenced to work on the public works of the City, for not exceeding thirty days, either, or both penalties to be inflicted, in the discretion of the Recorder, By an Act of 1914, it is provided that "To shave any living person, or trim the beard, or cut or dress the hair of any such person for hire, or pay to the person performing such service, or to any other person, shall be considered as practicing the occupation of barbering within the meaning of this chapter." The chapter will now be found in Volume 1, of Parks Code 1754 (a), and the following sections, and the Section from which the above quotation is made is 1754 (b).

11. Petitioners show that said ordinance of the City of Atlanta is repugnant to the Constitution of the United States, and the Fourteenth Amendment thereof, and is therefore void, because it deprives petitioners, and each ofthem, of their liberty and property without due process of law, and denies to petitioners, and each of them, the equal protection of the laws and said ordinance also violates the Constitution of the United States, and Article 1, Section 1, paragraphs 2 and 3 of the Constitution of the State of Georgia, because said ordinance prevents plaintiffs and each of them, from following, for the purpose of making a living in a lawful way, one of thelawful and ordinary vocations of life for which plaintiffs are well qualified by training and experience, while barbers, other than colored barbers, are not prevented from so doing, and it takes from plaintiffs, and each of them, the right to do lawful work for their customers' children under fourteen years of age, under lawful contracts while barbers who are not colored are permitted to do such work, and because said ordinance deprives plaintiffs, and each of them, of the right to make contracts about their affairs and deprives plaintiffs, and each of them of the liberty to make contracts by which they engage to perform lawful labor, and by which lawfully, to earn their living, in this- that Section 1, in connection with Section 3, of said ordinance, makes it a crime for plaintiffs,

and each of them, to make contracts with their white customers, which their white customers are willing to make by which for an agreed charge, they cut or dress the hair of children under fourteen years of age.

12. And petitioners say that said ordinance is void, for the foregoing reasons and that, in addition, it is void because the City of Atlanta, under its charter, has no power or authority to pass it, and no right or power to enforce it.

13. And petitioners say that Section 2, of said ordinance, is void, for the reason that the City of Atlanta has no expressed authority, under its Charter, to pass it, and it has no power otherwise to pass it. Such police power as the City of Atlanta has is contained in its charter and has been given to it by the State, but said Section cannot be justified as being a lawful exercise of the City's police power, because said Section is not as appropriate and legitimate means for the accomplishment of any lawful purpose, and it does not accomplish any lawful purpose and is a discrimination against petitioners, because their places of business, in the City of Atlanta, are not required by the City's ordinances to close at seven o'clock so far as petitioners are informed and believe. And the City of Atlanta has no right or authority, under its Charter, to regulate the hours of employment in the sjops, stores, factories and other places of business in its limits, and if it had such powers, said ordinance is not a proper exercise thereof, because it prescribes only the closing time of shops, and thereunder persons employed in them are required to stop work without any regard whatever as to when they began it. And petitioners furthermore show that even if the City of Atlanta has authority under its Charter, to pass said ordinance and Section 2 thereof, said Section 2 is void, because it is in conflict with those provisions of the Constitution of the United States, and of the State of Georgia above referred to, for the reasons in this petition hereinbefore set forth.

14. And petitioners show that the Legislature of the State of Georgia, by an Act approved on the day of 1914, now appearing in the Acts of 1914, on pages 75, and the following pages, and in Section 1754 (a), and the following Sections of Parks Code,

Undertook to provide in detail, and did so provide, as to who should be considered barbers in this State, their qualifications, the method by which they should obtain certificates entitling them to practice their trade, and how shops should be run, in order to make them sanitary, and created a Board, and made its the Board's duty to see that the Act is complied with. And petitioners as owners and barbers, have complied with said Act in all respects, though it is true that petitioners have been unable to find the Board established by that Act, since January 1, 1926, Said Act applied to all cities and towns in the State of Georgia having a population of five thousand (5,000) inhabitants, or more, and the City of Atlanta is in that class. And petitioners say that said Statute is a penal Statute, and was intended by the Legislature to cover the entire subject, and was intended to protect the public to the extent that the public needs protection, and, the municipalities by that Act, are forbidden to legislate on the subject.

15. Petitioners show that if the City of Atlanta has any authority to legislate on the subject, said Ordinance is arbitrary and unreasonable, and, for that reason, is void. And Section 1 of said ordinance in forbidding plaintiffs to do work for children under fourteen years of age, seeks to make a classification, based on color only, and has no regard to the wishes of the white people who would be perfectly free, in the absence of such an ordinance, to employ, or to refuse to employ, colored barbers, and such a classification is unjustly and unreasonably discrimatory, and is violative of those provisions of the Constitution of the United States and the State of Georgia hereinabove referred to, and such a classification is unreasonable and arbitrary and serves no valid purpose and accomplishes no useful or lawful end, and is, therefore, void.

16. Section 2 of said ordinance is also void in that it is a criminal ordinance and is so vague and indefinite that it is void. Petitioners point out in this respect that said ordinance purports to require shops to close at a certain hour, and does not provide anywhere when said shops may open again, and the time that they shal remain closed being left uncertain and undetermined leaves the

ordinance so vague and indefinite in this respect that it cannot belegally enforced as a criminal ordinance.

Petitioners further show that if this is not the correct construction of section 2 then the only other possible construction is that the said shops shall close at seven and may open again at any time they wish--for example, they might open again at five minutes after seven. If this construction is put on the said ordinance, the same is then arbitrary and unreasonable and places an entirely frivolous and useless requirement upon the shops, and the ordinance is, therefore, void for the reasons herein presented.

17. Said Section 2 of the said ordinance is so arbitrary and unreasonable as not to constitute a legitimate exercise of police power, and, therefore, deprives petitioners of their right of liberty and property guaranteed by the constitutional provisions of both the United States and the State of Georgia heretofore referred to. Petitioners show that it is beyond the constitutional power of the State, or of its agents to deprive grown, able- bodied men in an occupation that is neither hazardous nor dpecially straining on the health of the workers, of the liberty to fix and determine their own hours of labor. Petitioners further show, however, that the particular ordinance goes beyond even this point. It is not a limitation of the number of hours which they may work, but sets an arbitrary stopping point for work. For example a barber who commenced work at a quarter of seven, P. M., would by the terms of said ordinance, be required to stop work at seven, although he had worked only fifteen minutes. Petitioners show that there is nothing about the barber's trade which justifies such a provision as an exercise of police power. On the contrary, there are many men who are so situated that their occupations make it impossible for them to visit barber shops for services during the day-time period of each day, and there are special reasons why the public interest requires the barber shops should be allowed to remain open into the evening hours.

18. Petitioners show that unless they shall be protected by a court of equity, the City of Atlanta and its police officers will endeavor to enforce said ordinance and will prosecute petitioners if they should keep their shops open contrary to the terms of said ordinance, and will prosecute petitioners if they should do barbering

for children under fourteen years of age at the request of their parents, and such prosecutions would destroy the business of plaintiffs before the courts could pass upon the constitutionality of said ordinance if the question could only be made in criminal prosecution, and that it is inequitable and unjust for petitioners to be prosecuted under said ordinance, because it is unconstitutional in the respects referred to, and the number of prosecutions would be great unless petitioners should obey the ordinance, and if petitioners should obey the ordinance, their business would be ruined. Petitioners have already suffered considerable loss of trade and loss of money, by reason of the passage of said ordinance, although it has been in existence for only a few days, and petitioners say that such loss is confiscatory, and should not have been imposed on petitioners, and that the imposition in equity should be stopped at the earliest possible moment.

Said ordinance by its terms went into effect at the time of its passage and the police have been enforcing it since said date, and are now enforcing it, and although it is null, plaintiffs have no adequate remedy at law and can obtain relief against its oppressive and illegal provisions in a court of equity only.

Wherefore, petitioners pray that this Honorable Court by its decree declare that said Section 2 of said ordinance and as much of said Section 1 thereof as forbids colored barbers from serving as barbers , children under the age of fourteen years, null and void, for the reason and on the grounds therein set forth, and that the City of Atlanta, its officers and agents, be permanently enjoined from enforcing and from attempting to enforce said Section 2 and so much of said Section 1 as applies to children under fourteen years of age, and, that in the meantime, and until a hearing can be had, that said City of Atlanta, its officers and agents, be temporarily restrained and enjoined from enforcing and from attempting to enforce said Section 2 and as much of said Section 1 as forbids colored barbers from serving as barbers, children under fourteen years of age, and that process issue requiring said City of Atlanta to be and appear at the next term ofthis Honorable Court to answer the petitioners' complaint, and that petitioners have such other and

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further relief to which they may be entitled and as to justice and equity appertain.

Brandon and Hynds.
Alston, Alston, Foster and Moise,
Little, Powell, Smith and Goldstein.
Attys. for Petitioners.

STATE OF GEORGIA,
COUNTY OF FULTON.

Personally come R. C. Chaires and Benj. Greene, who on oath state that they are the plaintiffs named in the foregoing petition and that the statements of fact therein contained are true, and that they are advised and believe the statements of law therein contained are true.

R. C. Chaires
Benj. Greene.

Sworn to and subscribed before me,
this the 23rd day of Feby. 1926.
A. A. Baumstark, N. P. State at Large, Ga.

Upon considering the foregoing petition, it is Ordered that until a hearing can be had, the City of Atlanta be restrained from enforcing and attempting to enforce that part of Section 1 of the ordinance described in the petition, which forbids colored barbers from serving as barbers, children under fourteen years of age, and from enforcing and attempting to enforce Section 2 of said ordinance, and that said City of Atlanta be restrained from instituting prosecutions thereunder, and that said City of Atlanta show cause before Judge presiding in motion division at the Courthouse on the 6th day of March 1926, why it should not be enjoined as prayed for in said petition.

Let the petition and this order be filed and a copy thereof be served on the said City of Atlanta. In open court, this 23rd day of Feby. 1926.

E. D. Thomas,
Judge S. C. A. C.

EXHIBIT "A".

Atlanta, Ga.

Feb. 15, 1926.

By Councilman D. W. Adams:-

An ordinance providing that no colored barber shall serve, as a barber, white women, white girls and children under 14 years of age, and also closing all barber shops during week days except on Saturday, at 7 o'clock P. M., and on Saturday at 9 o'clock P. M. and for other purposes.

Be it ordained by the Mayor and General Council of the City of Atlanta as follows:

Section 1. Hereafter no colored barbers shall serve, as a barber, white women, white girls, or children under the age of fourteen years old, meaning by this doing any of the work such as barbers ordinarily perform and as defined by the Statute of the State of Ga.

Section 2. All barber shops in the City of Atlanta shall hereafter be closed, during week days, at 7o'clock P. M., except on Saturday when they shall close at 9 o'clock P. M.,

Section 3. Any barber, their agents or employees or the manager of any barber shop, violating either of the foregoing sections shall be deemed guilty of an offense and on conviction thereof in the Recorder's Court shall be punished by a fine not exceeding $200.00 or sentenced to work on the public works of the City for not exceeding 30 days, either or both penalties to be inflicted in the discretion of the Recorder.

Section 4. That all ordinances and parts of ordinances in conflict with this ordinance be and the same are hereby repealed.

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ORIGINAL PETITION: Filed February 23, 1926.

C. H. Brotherton, Deputy Clerk.