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Municipal Corporations--Police Power--Height of Buildings

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intention is futile) in § 4, it can be only in the description of the relationship of husband and wife. Such is the reasoning of the dissenting opinion. And it may be added that in Cecil v. Clark, supra, the very form of the certificate was directly relied upon as dictating its essentials.

Municipal Corporations—Police Power—Height of Buildings.—Under a charter authorization to regulate the height of new buildings, the defendant city refused a permit to relator to build a one story building on his lot in the business section. Held, that the city’s policy to prevent erection of buildings less than three stories high in that section cannot be justified under its police power. State, ex rel. Sale v. Stahlman, 94 S. E. 497 (W. Va. 1917).

There seems to be no doubt that a municipality under the police power may impose reasonable regulations as to the height and construction of buildings so long as such regulations tend to promote the health or safety of its inhabitants. Welch v. Swasey, 193 Mass. 364, 79 N. E. 745, affirmed in 214 U. S. 91, 105 (1908); Charleston v. Reed, 27 W. Va. 681, 55 Am. Rep. 336 (1886); Fellows v. Charleston, 62 W. Va. 665, 59 S. E. 623, 125 Am. St. Rep. 990, 13 L. R. A. (N. S.) 737 (1907); see Dillon, Municipal Corporations, 5 ed., §696. In the principal case the court points out that the requirement of a height of three stories does not have, as was claimed, "any reasonable or substantial tendency to promote safety," but might only be supported by aesthetic, civic, or economic views which are generally regarded as outside the scope of the police power. See Dillon, supra, §695; Bostock v. Sams, 95 Md. 400, 52 Atl. 665 (1902); Commonwealth v. Boston Adv. Co., 188 Mass. 348, 74 N. E. 601 (1905); Frith v. Board of Affairs, 75 W. Va. 456, 463-5, 84 S. E. 105 (1915). In the latter case the court declared an ordinance of the city of Charleston providing for a building line invalid and such seems to be the weight of authority in this country. Eubank v. Richmond, 226 U. S. 137 (1912); see The Bar, June, 1915, p. 40. Symmetry and beauty in buildings have generally been attained only by the exercise of the power of eminent domain or by private building restrictions, though a tendency to secure aesthetic purposes under the police power would seem to be evidenced by the alacrity with which various courts have abated bill boards as nuisances. See Cusack Co. v. Chicago, 267 Ill. 344, 108 N. E. 340 (1914); 10 Ill. L. Rev. 304. While it is true that unsightliness is usually not so offensive as noises or stenches, it is difficult to perceive the distinction which the courts generally draw between them, especially since the din and stench at times arise from the conduct of important industries and are often not detrimental to the health of the community. See Freund, Police Power, §182; Larremore, "Public Aesthetics," 20 Harv. L. Rev. 35.