On 28 February 1866, Parliament formed a Select Committee to examine the laws for licensing and regulating places of entertainment. The issue at stake was the increasing frequency of comic sketches, ballet, pantomime and operatic selections being performed in London music halls. Though popular with audiences, such performances were illegal, because music halls, licensed by local magistrates, were not authorized to present theatrical entertainment. Only the Lord Chamberlain could authorize that, but he had no jurisdiction over the music halls.

In 1843, when the Theatres Regulation Act was passed, London had a population of one and a half million, the Lord Chamberlain had licensed twenty-four theatres, and music halls had yet to be invented. By 1866, the number of Londoners surpassed three million – the population doubled in but a generation – and twenty-five licensed theatres operated in the metropolis, along with thirty music halls. Thus, while the number of theatres remained virtually unchanged (in real terms they declined, because the population was growing) the number of music halls steadily increased. Merely to maintain the 1843 ratio of theatres to Londoners – twenty-four theatres for a million and a half people – thirty new theatres should have been built by 1866.

Nearly all licensed theatres, from Drury Lane in the fashionable West End to the Standard in most unfashionable Shoreditch, stood in united opposition to music halls. Theatre managers struggling to turn a profit complained that music halls stole the gallery sections of their audience. The music halls were frustrated that their advancement was checked by unfair licensing laws. Certainly the laws were ambiguous, and open conflict was unavoidable. As Sir Richard Mayne, Chief Commissioner of the Metropolitan Police, dryly observed: ‘persons who are licensed for theatrical performances are naturally anxious to report unlicensed performances’. In this atmosphere of accusation and recrimination, the Committee called its witnesses.

But long before that day, the Committee knew what everyone in the theatrical world knew: the licensing laws were a mess. Subsequent to the Act of 1843, all London theatres were licensed by the Lord Chamberlain, who also censored the content of performances by requiring that the script be approved in advance by the Examiner of Plays. The Act was silent on the matter of regulating music halls,
because in 1843 they did not exist. Once, however, music halls arrived on the scene, they were licensed by local magistrates under the Disorderly Houses Act of 1751.

Under the terms of the 1751 Act, a music hall licence permitted 'public dancing, music, or other public entertainment of the like kind'. The Act entailed no censorship, for it was limited to defining, however inadequately, the kinds of entertainment that were permissible. Like the several hundred licensed saloons and singing taverns, music halls were free to put on the bill whatever they liked in terms of content, as long as the form did not exceed the bounds of the licence.

The question as to whether London music halls were being properly licensed arose from an ambiguity in the 1843 Theatres Regulation Act. The notorious paragraph twenty-three stipulated that 'every Tragedy, Comedy, Farce, Opera, Burletta, Interlude, Melodrama, Pantomime, or other entertainment of the stage, or any part thereof' constituted a theatre play – and thus had to be licensed by the Lord Chamberlain. The problem was that by the early 1860s music halls were regularly presenting 'entertainments of the stage', most especially pantomime and opera. Indeed in 1854, when music halls were still in their infancy, Parliament acknowledged that '[t]he imperfect definition of the term stage-play, given in the [1843] act, enables persons to have performances, some of them of a very inferior and demoralizing character, in places that are not licensed [by the Lord Chamberlain]'.

Certainly these stage performances were illegal, for they violated the music hall's licence. Yet there was no way to make them legal because magistrates could not license stage plays and the Lord Chamberlain could not license music halls. In an article printed a month before the Select Committee began its hearings, the Era, the main theatrical trade paper, summarized this chaotic state of affairs:

> the whole Licensing System is an incoherent absurdity, and a positive insult to the common-sense of the age. Act of Parliament is made to oppose Act of Parliament, Lord Chamberlain is made to contradict the County Magistracy, and general confusion is, to all appearances, sedulously cultivated rather than avoided.

Testing the coherence of the law, and recognizing a chance to increase their market share, music halls began to introduce certain kinds of performances that the licensed theatres looked upon as their exclusive domain. In the larger West End music halls, the ones that catered for a more socially heterogeneous audience – and the ones most in competition with licensed theatres – the repertoire was dominated by ballet, pantomime, operatic selections and comic dialogue. In other words, precisely the kind of entertainment found on the stages of the smaller theatres near and along the Strand. As Frederick Strange told the Committee, an evening's entertainment at the Alhambra, the music hall of which he was the proprietor, consisted of

> a grand chorus; after that a duet; after that a ballet, which we call the comic ballet; then a little more singing and tumbling, and after then the second