

No. 13674

Supreme Court of Illinois

Harris

vs.

Pres.& Trustees of the
Town of Newark

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 140.

1867

1862

Harmon

25

Pussot

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1882

140 ISAAC HARRIS
vs.
THE PRESIDENT AND TRUSTEES OF THE TOWN OF NEWARK. } *Appeal from Kendall.*

141 SAME. }
vs. } *Same.*
SAME. }

142 SOLOMON C. BARNETT }
vs. } *Same.*
SAME. }

POINTS AND AUTHORITIES SUBMITTED BY THE APPELLANT.

The ordinances, before they can take effect, must be published. (Scate's Stat., p. 197, Sec. 7.)

There is no evidence showing that this was done.

The corporation had no power to declare the sale of liquor by the gallon a nuisance, or impose a penalty for the same.

The general law providing a penalty for selling liquor without a license, in less quantity than one gallon, by implication legalized the sale in larger quantities. The charter only authorizes the Corporation to make such ordinances to prevent and remove nuisances as are not inconsistent with the laws or constitution of the state. (Scate's Stat., p. 196, Sec. 5.)

The Corporation had no power to impose a penalty of more than five dollars for a violation of their ordinance. (Scate's Stat., p. 197, Sec. 8.) The act extending the powers of the President and Trustees of the town of Oswego, which provides for a greater penalty, is not in force in the town of Newark. It having been once rejected by a vote of the town, no subsequent vote can ratify or give force to its provisions. (Laws of 1857, p. 1331, Sec. 7.)

None of the acts give the Corporation power to pass an ordinance prohibiting the giving away of liquor.

D. P. JONES,
Att'y for Appellant.

$\frac{7}{8}$ 140. 1-2
 Harris et al
 $\frac{9}{1}$ vs

Town of Newark

Given May, 12, 1842
 J. L. Leland
 et al

State of Illinois
Supreme Court April term A.D. 1862

Isaac Harris

vs

The President & trustees
of the Town of Newell

} Appeal from Remittitur

And now comes
the said defendants by Arns
Woy their Attorney and say that
in the record and proceedings
aforesaid & in the rendition of
the judgment aforesaid there is no
error and they therefore pray
that the said judgment may
be sustained

Arns Woy
Atty for Defs

148
State of Illinois
Superior Court -
April Term 1862

Isaac Harris

vs
The President & Trustees
of the town of Mount
Jordan

Filed April 23rd 1862

L. Leland
Clerk.

United States of America
State of Illinois } ss
Kendall County

Came before the Honorable
Madison E. Hollister Judge
of the ninth Judicial Circuit
of the State of Illinois and
presiding Judge of the Circuit Court of Kendall County at
a Term Chief Justice and held at the Court House in
Olwego in said County on the thirteenth day of Jan-
-uary A. D. 1862 being the second Monday of Jan-
-uary A. D. 1862 and the Eighty sixth year of the Independence
of the United States of America.

Present the Hon. M. E. Hollister Judge of said
David P. Jones Peter atty.
G. M. Hallenback Clerk
Leigh Ladd Sheriff.

Attest G. M. Hallenback Clerk.

Exhib opened by Proclamation.

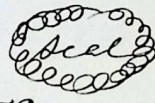
Be it Remembered that hereof to wit on
the 13th day of July A. D. 1861 there was filed
in the office of the Clerk of the Circuit Court ^{as said} a
transcript and proceeding in a certain matter in
the words and figures following that is to say

State of Illinois
Kendall County

The People of the State of
Illinois to any Constable of said
County, Greeting;

You are hereby commanded to summon Isaac
Harris to appear before me at my office in Newark on
the 3^d day of July A^d 1861 at 1 O'clock P.M. to answer the
complaint of the President & Trustees of the Town of Newark
on an action of debt for a failure to pay them a certain sum
not exceeding one hundred dollars and hereof make due
return as the law directs.

Given under my hand & seal this 28th day of June A^d 1861,

Asa Manchester 
Justice of the Peace

The following is the indorsement on the back of the above.

Summons

President & Trustees

vs
Isaac Harris

Demand	\$100 ⁰⁰ / ₁₀₀
Just Costs	.80

Served the within by reading the same to the
within named defendant this 29th day of June A^d 1861.

Fees	Service	.25
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Mileage	5
	<u>.30</u>

Alex. Hamilton
Constable

Manuscript

State of Illinois }
Kendall County } In Justice Court before A. A. Manchester
Summons issued June 28th 1861 returnable July
3rd 1861 and given to Alexander Hamilton Court.

Summons returned June 29th 1861, Served by reading
to defendant 29th day of June 1861 by A. Hamilton

Court. Fees 50^{cts}, One Subp. issued on the part of
plaintiffs returned - Served by reading to the
within named persons Fees - 85^{cts}

July 3, Parties in Court, Names called, & parties
answer by their Counsel.

Plaintiffs declare against Deft, for a breach of an
ordinance passed May 15th 1859, (2^d Section, against
selling vinous malted and spirituous liquors, Also for
giving away vinous malted & spirituous liquors

Deft, moved to dismiss suit because there is no
ordinance authorizing the conviction under an action
of debt, and that there is a variance between the
summons & the ordinance.

Court overruled the Motion. Also Deft, says
there is no corporation and he is not guilty.

Callet Warner, Augustus Culverson, S. C. Barnett and
others sworn as witnesses

After hearing the proofs & allegations the Court
concludes & adjudges that the plaintiffs have a
Judgment against the deft, for twenty dollars damages
and two ¹⁰/₁₀₀ dollars costs and that they have execution therefor

Bond approved and filed for appeal and filed for
appeal July 6th 1861,

I hereby certify that the above is a correct true
copy of the proceedings in the above entitled cause,

4 had before me, and herewith are inclosed all the papers appertaining thereunto except the subp. which is lost.

July 8th 1861,

Asa Manchester J.P.

Bond.

Know all men by these presents that we Isaac Harris and Selah Gridley are held and firmly bound unto the President & Board of Trustees of the Town of Newark in the penal sum of sixty dollars Lawful money of the United States for the payment of which well & truly to be made We bind ourselves our heirs & administrators jointly severally and firmly by these presents

Witness our hands & seals this fifth day of July 1861 —

The condition of the above obligation is such that whereas the said President and Board of Trustees of the Town of Newark did on the third day of July AD 1861 before Asa Manchester a Police Magistrate in and for the said Town of Newark County of Kendall and State of Illinois recover a Judgment against the above bounden Isaac Harris for the sum of twenty dollars, from which Judgment the said Isaac Harris has taken an appeal to the Circuit Court of the County of Kendall aforesaid & State of Illinois. Now if the said Isaac Harris shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal the above obligation to be void, otherwise to remain in full force and effect.

Isaac Harris

Seal

Selah Gridley

Seal

This Bond approved July 6th 1861 by me
Asa Manchester J.P.

State of Illinois } ss
Kendall County } The People of the State of Illinois, To
the Sheriff of said County, Greeting;

Whereas in a certain cause lately pending before
Asa Manchester Esquire one of the Justices of the peace
within and for said County wherein the President &
Board of Trustees of the Town of Newark were plaintiffs
and Isaac Harris was defendant, Judgment was
rendered by said Justice against the said Defendant
from which Judgment the said Defendant has
appealed to the Circuit Court of said County,

We therefore Command you that you summon
the said President and Board of Trustees of the Town of
Newark to be and appear before said Circuit Court on
the first day of the next term thereof to be held at
the Courthouse in Oswego on the first Monday in
September next at ten o'clock in the forenoon & abide
by and perform the Judgment of said Court in the premises

Witness G. M. Kollenback Clerk of said Court

and the seal thereof at Oswego in said County

this 14th day of August A.D. 1861

G. M. Kollenback, Clerk



The following indorsement appears on the above

Kendall Circuit Court

President & Trustees of Newark

Isaac Harris, appellant,

State of Illinois } ss
Kendall County }

I have duly served this writ by reading
the same to the President & Board of Trustees of the Town of Newark
to wit Lucien Farnum, Isaac Lott, Joseph S. Bibber
William Williams and Henry R. Fowler this 16th day

6
of August A. D. 1861

Leight Sudd
Sherriff

Filed in Circuit Court this 2^d day of September
A. D. 1861

G. M. Hollenbush

Clerk.

And Afterward to wit on the 17th day of January A. D.
1862 the same being one of the days of the January Term
A. D. 1862 of the Kendall County Circuit Court the following
among other proceedings were had in said Court and entered
of Record to wit,

The President and Trustees
of the Town of Stuart
v.

Anna Harris

Appeal

And now come the Plaintiffs
by (of their Attorney and

the said Defendant by Nelson Smith his Attorney as well
as in his own proper person who comes and by a consent
of the parties a jury in this cause is waived and the
same submitted to the Court for trial and the Court after
hearing Evidence not being fully advised in the premises
takes the suit under advisement.

And Afterward to wit on the 18th day of January A. D.
1862 the same being one of the days of the Term of the
Court aforesaid the following among other proceedings
were had in said Court and entered of Record to wit

7

The President and Trustees of
the Town of Newark

v.
Isaac Harris

Appeal

And now Come again
the parties to this suit
and the Court being now fully advised in the premises
finds the issues in this Cause joined in favor of the
Plaintiffs and assesses their damages herein at Twenty
Dollars - It is therefore Considered by the Court that
the Plaintiffs have and recover of and from the said Defendants
the said sum of Twenty Dollars as well as the Costs and
Charges by them in this behalf Expended and that they have
Execution therefor.

And Afterward to wit, on 22^d day of January A.D. 1862
the same being one of the days of the Term of the Court
aforesaid, the following among other proceedings were had
in said Court and entered of Record to wit;

The President and Trustees of
the Town of Newark

v.
Isaac Harris

Appeal

And now Comes the Defendant
by Fack, his attorney and moves
the Court for a new Trial herein and Charges come again
the Plaintiffs by Cogg their attorney and the Court after hearing
the parties in relation to the Defendants motion for a new trial
herein and being fully advised in the premises considers that
said Motion be overruled and a new trial Denied It is
therefore Considered by the Court that Plaintiffs still have
and recover of and from the said Defendants the said sum
of Twenty Dollars as well as the Costs and Charges

8

by them in this behalf Expended and that they have
 Execution thereon. And Chapman Comes the Defendant
 by Parks his Attorney and prays an appeal to the ~~Court~~
 Supreme Court which said Appeal is Granted upon
 Condition that he enter into Bond in the penal sum
 of one Hundred Dollars with Seth Gridley as
 security.

And Afterward Comes the Defendant to wit on
 the 23rd day of January A. D. 1862, ^{the same being one of the days of the Court above said} and files his
 Bill of Exceptions & Appeal Bond as follows
 to wit;

9
~~of August 1858.~~

Bright Lane, Sheriff

~~Due,~~

~~Devin~~

~~10.00~~

~~Miller~~

~~2.00~~

~~Rosen~~

~~.25~~

~~6.25~~

~~It is in Court on the third day of September~~
~~1858.~~

G. H. ~~Richardson~~ Clerk

The President & Trustees } Rendall Co. Cir. Court
of the Town of Newark } January Term
vs. } AD. 1862.
Isaac Harris }

Be it remembered that upon the trial of the above case by the Court, a jury having been waived It was admitted that the Record Book of plaintiff showed that the Village of Newark was incorporated on the 10th of February AD 1849 under the general Incorporation act of AD. 1845, that the following facts appear upon the face of the records of said Corporation in Addition. —

[The following is a part of the proceedings of the Pres. & Board of Trustees of the town of Newark at a meeting held May 17th 1858.]

On a Motion of A. D. Newton the Clerk was ordered to post notices of an election to adopt or reject an act passed by the Legislature in 1857 and approved Feb. 18. 1857 entitled An Act to extend the Jurisdiction and powers of the President and Trustees and Constables of the towns of Oswego and Newark in the County of Rendall.

10

Said election to be held at the public School house on the 29th day of May, instant, between the hours of One and five O'clock P.M. Ballot to be "For the Act" or "Against the Act"

Section 2nd
of an Ordinance
passed by the Pres. and
Board of Trustees of the
Town of Newark.
Apr. 30. 1858.

Any person who shall sell, barter, give away or exchange any spirituous, vinous, malt, fermented, mixed or intoxicating liquors within the Corporate limits of said Town, or who shall upon the sale barter or exchange of any goods chattels, wares Merchandize, property, chose in action, or upon any contract or agreement expressed or implied deliver or furnish, or cause to be delivered or furnished, or knowingly suffer to be taken or received any spirituous vinous malt fermented, mixed or intoxicating liquors shall be considered and adjudged guilty of a nuisance, and every such person upon conviction thereof shall forfeit and pay to said Town the sum of twenty dollars for each and every offence.

Clerks Office May 29th 1858

At an election held at the public School house pursuant to notice in the Town of Newark on the 29th day of May 1858 for the purpose of adopting or rejecting an act entitled "An Act to extend the jurisdiction and powers of the President and Trustees and Courtables of the Towns of Oswego and Newark in the County of Kendall and State of Illinois at which election W. H. Lewis was Moderator and Chas. Winn Clerk, The result was declared by the Moderator after canvass to be as follows.

For the Act,	No. of votes	52
Against the Act	No. of votes	54

Valentine Vermilye, Clerk of the Board
of Trustees for the Corporation of Newark

11
Part of the proceedings of the President Board of Trustees of
the Town of Newark March 13th 1860 —

It was also ordered that the Clerk post three
notices of an election to be held in the public school house
in the Town of Newark on the 24th day of March inst. to adopt
or reject an act passed by the Legislature in 1857 entitled
An Act to extend the jurisdiction and powers of the President
and Trustees and Constables of the towns of Oswego & Newark
in the County of Kendall, Said election to be held between
the hours of 1 and 5 o'clock in the P.M. and the form of Ballot
to be For the Act — and — Against the Act.

March 14, 1860, I hereby certify that I this day posted three
copies each of the above ordinance in relation to taxes &
notices for the election on the 24th Inst. One copy of each
at the P.O. One copy of each at the Newark Drug Store, one
copy of each at N. P. Barnard's Store

Albert Cook

Clerk of the Corporation

March 24. 1860

At an election held at the public School house in the
Town of Newark pursuant to notice on the 24th day of
March 1860 between the hours of One & five o'clock in the
P.M. of said day for the purpose of adopting or rejecting
an Act passed by the Legislature in 1857 entitled
"An Act to extend the jurisdiction and powers of the
President & Trustees and Constables of the towns of Oswego
and Newark in the County of Kendall, at which election
S. S. Wright acted as Judge and Albert Cook as Clerk
The result was declared by the Judge to be as follows,

For the Act,	thirty nine votes	39
Against the Act,	None	

We hereby certify that the above is the true and correct result of the election this day held for the purpose as above stated

Dated Newark March 24. 1860

Attest Albert Cook

Clerk of the election

Sam. S. Wright

Judge of the Election

I hereby certify that the above & foregoing are true copies from the Book of Records of the Corporation of Newark now in my possession

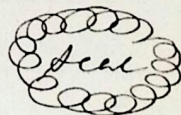
Newark January 29, 1862.

Albert Cook

Clerk of the Corporation.

It is further admitted that the defendant gave away some whiskey without any pay to some men working on the road in the Village of Newark on the 5th day of July A.D. 1861 and within the limits of the corporation of the Plaintiffs which was all the facts & proofs in the case, and no other proof being offered the Court gave judgment on those facts for Pltffs for twenty Dollars, To the rendition of which judgment by the Court the Defendant at the time excepted & prays that this his bill of exceptions may be signed and sealed by the Court, which is done

M. E. Hollister



Filed Jan. 23^d 1862.

G. M. Hollister

Clerk

Bond

Know all men by these presents that we Isaac Harris as principal and Selah Gridley as surety, are held and firmly bound unto the President & Trustees of the Town of Newark in the penal sum of One hundred dollars lawful money, for the payment of which well and truly to be made we bind ourselves our heirs & legal representatives firmly by these presents,

Witness our hands & seals this 23rd day of January A.D. 1862,

The condition of the above obligation is such that where at the January term of the Mendall County Circuit Court for A.D. 1862 The said President & Trustees of the Town of Newark received a judgment against the above bounden Harris for twenty dollars besides costs from which said judgment the said Harris prayed an appeal to the Supreme Court of the State of Illinois Now if the said Harris shall prosecute his Appeal with effect and without delay and pay whatever judgment, interest, damages & costs which may be rendered against him in the Supreme Court on the dismissal or trial of said appeal then the above obligation to be void, Otherwise to be and remain in full force and effect.

Isaac Harris

Selah Gridley



Filed Jan 23rd 1862

G. M. Kollenback K. Clerk

State of Illinois ss
Kendall County

I George M. Hollenback
Clerk of the Circuit Court
do hereby Certify that the Above and foregoing
is a true and Complete Transcript and Copy
of all proceedings had and entered of Record
in said Court together with a copy of all papers
filed ^{in my office} in the Case of the President and Trustees of
the Town of Newark against Isaac Harris
in

Witness Geo. M. Hollenback Clerk
of the Circuit of said County and
the Seal thereof at Oswego this
26th day of January A.D. 1862
G. M. Hollenback

Clerk,

15
State of Illinois - Supreme Court
April Term thereof A.D. 1862

Isaac Harris
vs
The President & Trustees
of the Town of Newark } Appeal from
Kendall

And now comes the said
Isaac Harris by D. D. Jones his
attorney & says that in the record
& proceedings aforesaid and
in the rendition of the judgment
aforesaid, manifest error hath
intervened, to his prejudice, in
this, to wit:

1st The court erred in finding the issue
in favor of the plaintiff and against
the defendant

2nd The court erred in rendering
judgment against the defendant

3^d The court ~~erred~~ erred in
overruling the motion for a
new trial

Wherefore, and for other errors in the
record & proceedings aforesaid he
prays that the judgment aforesaid
may be reversed, annulled, and for
wrought esteemed
D. D. Jones
Atty for appellant

140
Isaac Harris
The Pres. & Trustees of the
Town of Andover

Recd

Filed Dec. 29. 1862.
S. Ireland
Clk.

