

No. 14522

Supreme Court of Illinois

People

vs.

Battey

87
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 15

PEOPLE'S CAUSES.

Report

People

Battery

Inf 4803

14522

No. 15.

In Supreme Court April 1. A.D. 1863
People vs application of
Bolliq
v.
Lilas Battey

Additional Brief for application

Paley on
Corrections
p. 271.

"The power of imprisoning is given either
"as an original punishment, or
"as the means of enforcing payment
"of a pecuniary fine or in any other
"manner compelling obedience to
"the sentence of the magistrate. This
"power, in regard to offences cognizable
"by a summary jurisdiction is
"derived solely from statute and is
"altogether of a distinct nature from
"that which justices possess in regard
"to infractions of the peace."

Ibid.

"If a statute assigns this mode
"of punishment in the first instance
"it follows immediately upon and is
"the legal consequence of the judgment."

It is submitted that the ordinance
under which Bolliq was convicted, comes
within the above underscored definition
of Paley; that by this ordinance
the party convicted is to be punished

by an "immediate" imprisonment; an imprisonment which is the "Consequence of the judgment & not the consequence of a failure or refusal to pay that judgment. Strictly speaking the ordinance provides for an imprisonment with a privilege of commutation to a fine. That is, the means to induce

It is not the question whether this may not be done, in some way, but it is denied that the power may be wielded by a Justice of the Peace. All considerations of expediency, if worthy to be raised here, are fully answerable: e.g. the Town may sue by Indictment in a Court of Record or the ~~Leg~~ Legislature can create a city court with powers to try cases of this class, in which this penalty is desired.

But even regarding this as a means of coercing payment of a fine, the commitment is bad on its face and the prisoner should be discharged.

Valley on
Commitments.
v. 272

The same writer proceeds to say: "But where it" (the imprisonment) "is merely subsidiary to enforcing payment of the fine the magistrate cannot

"legally commit (unless under the provisions
 "of 11. & 12. Vict. Cap. 43) until he has
 "ascertained the want of sufficient
 "goods to answer the penalty; which
 "should regularly be certified by the
 "officer's return to the Warrant of
 "Distress."

2 Strange
 710
 Case & Shelf 7 In *Hill v. Bateman et al* decided
 by Ch. J. Raymond it was held
 that Bateman being a Justice of
 the Peace who had committed
 the plaintiff in that case without
 endeavouring to levy the penalty
 on the goods of Hill was guilty
 of a trespass and false imprisonment
 ; it appearing that Hill
 had goods & that the penalty
 could have been made.

See Charter
 of Town, a
 Public act.
 Copy of the
 sections appli-
 cable being
 herewith filed.

Therefore, the only mode of ascertaining
 a "failure or refusal" to pay the amount
 of the penalty is by issue and return
 of an execution against the goods,
 which answers to the Warrant of distress
 in use in England in similar cases.
 Not until this return has there accrued
 a failure or refusal under the
 Charter of the Town.

Jan 30/1857
 Rep. 154
 22. 1932
 53.

Any other construction would do manifest injustice to the citizen (as well as to the spirit and meaning of the Charter) because no matter how much property aside from ready money a defendant might have and no matter how desirous he might be of paying his fine with that property he must at once go to prison without that privilege. It cannot be that such is the intent of the Charter, or such the arbitrary power of the justice.

With the above remarks I submit the case
Apr. 24. 1843.

Geo. Paddock
of Counsel to

Bolling

3

Batter

Sec 6.

The charter of the Town of Princeton, passed 18 Feb. 1857 is a public act. By Article 4th. of the Charter the Town Council of the Town of Princeton is empowered to make regulations to secure the general health of the inhabitants, to declare what shall be a nuisance and to prevent and remove the same.

Sec. 19

To tax restrain prohibit and suppress tippling houses dram shops gambling houses bawdy houses and other disorderly houses within said town and within five miles thereof but not to license any house or place for the sale of intoxicating drinks of any kind as a beverage

amended in
1859 so as to
give power to license
tax regulate &
restrain such
houses & places.

Sec 31.

To regulate the police of said town to impose fines and forfeitures and penalties for the breach of any ordinance, and to provide for the recovery and ^{appropriation} ~~enforcement~~ of such fines and forfeitures and the enforcement of such penalties

Sec 33

To prevent and prohibit the introduction manufacturing keeping or selling of any vinous malt spirituous mixed or intoxicating liquors within said town and within five miles thereof except for chemical medicinal and mechanical purposes and to prohibit the giving the same away with a view to evade any penalty which may be provided for the unlawful sale of such liquors.

Sec. 34. The Town Council shall have power to make all ordinances which shall be necessary and proper for carrying into operation the powers specified in this act so that such ordinances be not repugnant to nor inconsistent with the Constitution of the United States or of this State.

Art. VII

Sec 3

The Town Council shall have power to provide for the punishment of offenders against the ordinances of said town by imprisonment in the County jail not exceeding thirty days for any one offence; and in all cases where such offenders shall fail or refuse to pay the fines forfeitures and costs which may be recorded or adjudged against them, and it shall be competent for the magistrate or other court before whom the same shall be tried to direct that such offenders shall be committed to the County jail until such fines forfeitures and costs shall be paid or otherwise discharged by process of law

ORDINANCES concerning fines &c

p. 23.

See page 23 of the Book of Ordinances.

p. 36.

Ordinance under which this prosecution was had - See page 36. Book.

addition of
of pete koren.

In Supreme Court Illinois
Apr. Term A.D. 1843.

The application of Peter Bollig
for discharge under Habeas Corpus act

No 15

Silas Battery

On the point that there was no refusal or failure to pay the fine and therefore no right under the charter of the Town to imprison I cite the case of

27. Dec 39

Henckles impleaded or v. County Court Monroe Co where this court (in 1841) held that the statute has not made it the duty of a constable to collect money except upon process.

Nash the Constable who demanded of Bollig the fine had no process on which it could be paid and it was no more demandable by him than by any other spectator of the trial. If, therefore, there has been no demand there has been neither failure nor refusal; if neither failure nor refusal, then no right under the charter to imprison.

The above authority is:

captioned my notice in preparing a former brief in
this cause tho. it is probably familiar to the
Court. I desire to add it to the papers filed.

Princeton May 7. 1843

John Raddock
of counsel to

15 P. 8.
The People in appeal
of Peter Butler
vs
Sims Butler
vs
The Atty. Gen. v. Peter Butler
at Attorney General's
office
Filed May 13/43
Chas. J. Allen

In Supreme Court State of Illinois
3rd Grand Division Apl. Term 1843
People vs on the application
of Peter Bolliq
v.
Jas Battery

The attention of the Court is respectfully requested to the following:

The applicant is confined in a county jail for a breach of the ordinance (2nd Section) set out in the paper marked "B" attached to the application.

See Printed
paper pasted
on Exhibit "B."

This confinement is necessarily either by way of punishment for the offense described in the ordinance, or it is by way of proceeds to Compel the payment of the fine levied by the justice.

But it (the imprisonment) is merely punishment and not proceeds in any sense. It does not follow the judgment but is a part of it and such is the intention of the ordinance. The fine and costs, if paid, must be paid in prison since the deft. by the ordinance

is adjudged to forfeit a sum of money and be imprisoned until it is paid. If the ordinance allowed a given time to elapse before imprisonment (which is not the case) it might be claimed with some plausibility that incarceration in jail was not a necessary part of the judgment

It was the legal intent of the ordinance (which is referred to in the *Mittimus*, and set out as above stated) that an offense should be created "punishable with imprisonment & fine". This is shown by the wording of the 3^d Section of the Ordinance which Section defines a certain nuisance to be punished with fine and imprisonment as is provided in said second section.

The offense being punishable with imprisonment it is not cognizable by a Police Magistrate who is but a Justice of the Peace under the decisions of this Court. The Constitutional provision on this point is clear and express.

Sect. 3.

Printed Ord. in
Exhibit. B.

Paris v. People
27 Ill. 76.

17 Ill. 143.
" " 339
25 " 84

New Const.
Sect. 10 art. 13

Orig. Const
1878
art 4 Sec. 8.

This provision is not to be found in the old Constitution; under which justices had such jurisdiction as the legislature chose to confer. ~~Under which also the act of 1845 was passed in relation to assaults and batteries.~~ Evidently it was the design in the new constitution to deny to justices the dangerous or at least solemn and delicate power to punish by imprisonment. This is a safeguard reserved by the people for their own protection; it is not to be quibbled away by the pretense that a judgment like the one at bar is merely by way of process and is not a punishment.

only So far from the imprisonment being a means of enforcing the payment of the fine, the payment of the fine and costs is the means of release from an imprisonment which is inseparable from the judgment and the jurisdiction.

Acts Extend
the Corporate
Powers of
Princeton
Sec. 3. art. 7
on page 20. 7
of Pamphlet
filed herewith

But waiving for the sake of the argument what has been urged above, and admitting that the Town Charter of said Princeton

allows a commitment where the party
convicted of a breach of ordinance
fails or refuses to pay the fine
and costs recovered before the
justice the only means by which
this failure or refusal can be
ascertained is by fieri facias.
No fi. fa. issued in this case. It is
no part of the Constable's duties
to demand or receive the money
without a writ on which it can
be paid. The recitals as to the
demand endorsed on the mitti-
mus by the Constable are null
and void.

The case of *Paris v. People*
27th Ills. 76 is cited as a
recent decision of this court
throwing some light on the
question of jurisdiction mooted
above

Ottawa, Apr. 23. 1883

Geo L. Paddock
of Counsel
for applicant

Act. 1834
1st People
Stat. 187.

By the act of 1834 creating the office of Police Magis-
trate the rules of practice and proceedings
before such magistrates are the same as

before Justices of the Peace unless changed by
the charter of the Town

2u. Whether the granting a power by the charter
to the Council to provide by ordinance
for the enforcement of penalties is such
a change?

15
People vs
application of
Pete. Bollig
vs.
Silas Battery
Habeas Corpus

Suggestions upon
the application
submitted by appli-
cant's counsel

Filed At 23, 1863

J. Seaman
Clerk

State of Illinois } April Term
County of Bureau } A.D. 1863.
Town of Princeton }

To the Honourable Judges of the
Supreme Court of said State
At Ottawa sitting:

Peter Bolliq of said ^{County} ~~Town~~ respectfully
represents that he is imprisoned and
detained in the County jail of said
County by one Silas Batley (who is Sheriff
of said County and keeper of said jail)
without any legal authority under colour
of a certain pretended commitment
issued by one George O. Ide a Justice
of the Peace of said County of which
the paper hereto appended, marked
"A" is a true copy.

The said Peter Bolliq therefore
prays that a Writ of Habeas Corpus
may be issued to the said Silas
Batley and that this applicant
may be thereupon discharged from
his said imprisonment upon the
grounds set forth in the paper hereto
annexed marked "B" made a part
hereof and on such other grounds as may
appear.

Peter Bolliq

Princeton Apr. 22. 1863.

Liland

Gibbons & Raddock
attys for applicant

State of Illinois }
County of Bureau }

Peter Bollig being duly sworn on his oath doth say that the statements in the foregoing application are true in substance and in fact that the matters and things set forth in said Exhibit "B" referred to in said application are true as therein stated and set forth and further he says not

Peter Bollig

Subscribed and sworn
at Princeton before me
this 22nd day of April
AD 1843. as witness my
hand and seal of
office as Clerk of the
Circuit Court of said
Bureau County.

Geo. M. Radcliffe clrk
By Cairo D. Trimble Deputy

State of Illinois Bureau County § 43
Town of Princeton

The People of the State of Illinois
To the Town Constable Town Marshal or any
Policeman of said Town or any Constable
of said County Greeting:

Whereas upon the information and complaint
of L. S. Smith Town attorney of the said Town
lately exhibited before me the undersigned
Police Magistrate of the Town of Princeton
in said County against Peter Bolleg of
said Town charging him with a failure
to pay said town a certain demand
not exceeding one hundred
dollars for a violation of an ordinance
or Police regulation of said town of
Princeton by him said Peter Bolleg
by unlawfully selling beer at and within
the corporate limits of said town
at divers times between the 15th day
of March A.D. 1883 and the ninth day
of April A.D. 1883 Contrary to the provisions
of section two of an Ordinance of said
Town entitled an Ordinance relating
to brandy rum gin whiskey ale porter
beer wine and other spiritous various malt
fermented mixed and intoxicating
liquors adopted by the Town of Prince-

from Bureau County Illinois on Feb'y 23rd 1863 "he the said Peter Bolliq not being then and there an established apothecary or druggist the said Peter Bolliq was duly summoned and tried before said Police Magistrate and a jury and found guilty and convicted of said violation and the said jury assessed the fine which he the said Peter Bolliq should pay at the sum of Twenty five dollars; and it was thereupon considered and determined by me that the said John of Princeton plaintiff in said suit have and recover of said defendant Peter Bolliq the sum of Twenty five Dollars "debt (the same being the amount of said fine) with costs of prosecution herein taxed at twenty three dollars and thirty seven cents of which said defendant is convicted; and whereas also I the said Police Magistrate have directed that in case said Peter Bolliq shall fail or refuse to pay said fine and costs he shall be committed to the County jail of said Bureau County until said fine and costs shall be paid or otherwise discharged by process of law

We therefore command you to demand of
said Peter Bolliq the amount of said fine
and costs and in case said Peter Bolliq
shall fail or refuse to pay the same then you
are to take said Peter Bolliq and convey
him to the County jail of said County
and deliver him into the custody
of the keeper of said jail; and you the
said keeper in such case are hereby
required to receive the said Peter Bolliq
into your custody in said jail and
keep there safely keep pursuant to
the provisions of section three of article
seven of the Charter and of an ordinance
of said town entitled "an Ordinance
relating to imprisonment in the County
jail" until said fine and costs shall
be paid or otherwise discharged by
process of law

Given under the hand & seal
of the said Police magistrate this
twenty first day of April A.D. 1883.

(Signed) George A. Ide {Seal}
Police Magistrate
of the Town of Princeton

[Copy]

State of Illinois Bureau County ss }
Town of Princeton } Demand

having been made by one of the within named
defendant for the within debt or fine &
costs and he having refused to pay
said amount I have taken the body
of the within named defendant Peter
Bolliq and have delivered him to the
Keeper of the County Jail of said County
this 21. day of April A.D. 1863

(Signed) J. E. Nash
Town Constable of the
Town of Princeton.

[Endorsed on back of Mittimus]
No. 1860. Town of Princeton

vs.

Peter Bolliq
Mittimus

Mittimus returned satisfied

this day of 186

Debt \$25.00

Costs 23.37

Mittimus 25

Return & Const fee 50
\$49.12

Copy of Receipt of Sheriff also endorsed
on mittimus:

Received into my custody in the County Jail of Bureau
County State of Illinois in Princeton this 21st day of April
1863 at 1/2 past 10 o'clock pm the within named
defendant who is delivered to me and by me
received pursuant to the direction of the within writ.
(Signed) Silas Battery Keeper.

Exhibit "B" referred to in Application
On the ninth day of April, A. D. 1883, George
D. Ide, police magistrate of the Town of
Princeton, in the county of Bureau and
State of Illinois issued a summons in
favor of said Town of Princeton and against
said Peter Bollig, this applicant, in a
suit instituted before said police
magistrate for the alleged violation of
~~various~~ ^{and} ordinances of said Town, passed
February 23: 1883, and particularly of sec-
tion two of said ordinance by selling
beer contrary to said section two; a
copy of which are hereto which ordina-
ces ~~are~~ ^{is} as follows

An Ordinance,

RELATING TO BRANDY, RUM, GIN, WHISKEY,
ALE, PORTER, BEER, WINE, AND OTHER
SPIRITUOUS, VINOUS, MALT, FERMENTED,
MIXED AND INTOXICATING LIQUORS, ADOPT-
ED BY THE TOWN OF PRINCETON, IN BU-
REAU COUNTY, ILLINOIS, ON FEB. 23d,
1883.

Sec. 1. Be it ordained by the Town of Princeton,
that the importation, introduction, keeping or manu-
facturing, within the corporate limits of said town of
Princeton, or within one mile thereof, of beer, wine,
ale, porter, brandy, rum, gin, or whiskey, or of any
other vinous, malt, spirituous, fermented, mixed, or in-
toxicating liquors, or any mixture, part of which is any
of said liquors, for the purpose of selling, bartering, or
exchanging the same, or for any species of traffic there-
in, except as hereinafter provided, is hereby declared
to be a nuisance, and every person guilty thereof, and
each and every person knowingly aiding and assist-
ing therein, as agent, clerk, servant, or otherwise, shall
upon conviction thereof, forfeit and pay to the town of
Princeton the sum of Twenty-five Dollars, and be im-
prisoned in the County jail of said County until the fine
and costs be paid, and if the person or persons owning
or having the charge or possession of any said li-
quors shall fail or neglect to remove the same without
and beyond the corporate limits of said town, and from
one mile thereof, within twenty-four hours after their
conviction, every such person shall forfeit and pay to
the said town of Princeton the sum of Twenty-five
Dollars, for every twenty-four hours that any of said
liquors shall remain within said corporate limits, or
within one mile thereof, and be imprisoned in the coun-
ty jail of said County until the fine and costs be paid.

Sec. 2. Any person who shall sell barter or exchange
ale, porter, beer, wine, brandy, rum, gin, or whiskey, or
any other spirituous, vinous, malt, fermented, mixed,
or intoxicating liquors, or any mixture, part of which
is any of said liquors, within the corporate limits of
said town, or within one mile thereof, except as here-
inafter provided, or who shall upon the sale, barter,
or exchange of any goods, chattels, wares, merchan-
dise, property, chose in action, or upon any promise,
contract, or agreement, expressed or implied, except
as hereinafter provided, deliver or furnish, or cause to
be delivered or furnished, or knowingly suffer to be
taken or received any brandy, rum, gin, whiskey, ale,
porter, beer, or wine, or any other spirituous, vinous,
malt, fermented, mixed, or intoxicating liquors, or any
mixture, part of which is any of said liquors, shall be
considered and adjudged to be guilty of a nuisance, and
every such person shall, upon conviction thereof, for-
feit and pay to the said town of Princeton the sum of
Twenty-five Dollars for each and every offense, and
be imprisoned in the county jail of said County, until
the fine and costs be paid.

Sec. 3. The giving away by any person or persons, within the corporate limits of said town, or within one mile thereof, of any of the aforesaid liquors, with a view to evade any of said penalties provided in said second section, or if any person or persons shall suffer any other person or persons to drink any of said liquors in any public room, house, or place occupied by him, her or them, he she or they so offending shall be considered and adjudged to be guilty of a nuisance, and be punished with fine and imprisonment as is provided in said second section.

Sec. 4. Whenever any resident of said town or county shall complain on oath before the Police Magistrate of said town that he has good reason to believe and verily does believe that any rum, gin, brandy, whiskey, ale, porter, wine, or beer or any other spirituous, vinous, malt, fermented, mixed or intoxicating liquors, or any mixture part of which is any of said liquors, are stored or deposited or held or kept in store, in deposit,

or in hand, in any store, warehouse, dwelling, room or building, or any cellar or place within the corporate limits of said town, or within one mile thereof, for the purpose of selling, bartering, or exchanging the same, or for any species of traffic therein, except as hereinafter provided, or for the purpose of furnishing or delivering the same in violation of this ordinance, it shall be the duty of such Police Magistrate to issue a warrant under his hand, directed to the town Marshal or town Constable of said town, reciting the substance of said complaint, and commanding him to forthwith examine the place mentioned in said complaint, which process the said town Marshal or town Constable shall execute and return with his endorsement thereon, showing how he has executed the same, and if upon such examination he shall find any of the liquors aforesaid, which he has good reason to believe are stored, deposited, or held or kept in store, in deposit, or on hand, for any of the purposes aforesaid, he shall make his return accordingly, stating the name or names of the person or persons owning the same, and in whose possession, or charge, or care the same shall be, and thereupon it shall be the duty of the town attorney and the town constable and marshal and each of them, (if in the opinion of them or either of them there is good cause so to do) to institute in such cases such suits and prosecutions as may be instituted against said persons for violation of the first section of this ordinance.

Sec. 5. When any of the liquors designated in said last section shall be found on the premises of any person or persons, by the said town marshal or town constable or officer directed to examine said premises and he has good reason to believe they are there in violation of this ordinance, the said town marshal, town constable or officer shall forthwith seize and remove the liquors so found, and safely keep the same until the suit or suits, or prosecution or prosecutions against the person or persons whose names shall be returned by him as being the party or parties having unlawful possession thereof, shall be finally disposed of, and also if such person or persons shall be convicted in such suit or suits or prosecution or prosecutions, until the judgment or judgments thereon shall be satisfied.

Sec. 6. The liquors seized by the town marshal, town constable or officers as aforesaid shall always be under the control of the President and Town Council of said town of Princeton, and may be by them restored to the person or persons from whom they may have been taken, whenever and wherever the same be delivered to such persons, on satisfactory evidence, and security given by the party or parties, that they will not be kept or stored in violation of the provisions of the ordinance aforesaid, provided however that the President and Town Council may require, before any such restoration shall be made, that the said party or parties shall first pay in full the amount of the judgment or judgments in the premises against him or them including all costs, expenses and charges, and it is further provided in case of conviction under the first section of this ordinance, of the party or parties having such unlawful possession of liquors as aforesaid, the said President and Town Council shall have authority to destroy such liquors, or cause them to be removed beyond the Corporate limits of said town and one mile therefrom, as they may determine.

Sec. 7th. This ordinance shall not apply to the sale or manufacture of any spirituous, vinous, malt, fermented, mixed or intoxicating liquors, made by any established Apothecary or Druggist, his agent, clerk, or servants for sacramental, medicinal, or mechanical purposes, provided the same are sold in good faith. When for sacramental purposes, under the certificate of an officer of the church, and when for medicinal purposes, under the prescription of a Physician who is a practitioner, and provided further, that said Apothecary or Druggist shall keep, or cause to be kept a full and complete record of each and every sale of all spirituous, vinous, malt, fermented, mixed, or intoxicating liquors in the following form, to-wit:

when sold	by whom	by whom	kind	quantity	by whom
prescribed					delivered

And shall upon the second Monday of each month after this ordinance is in force, furnish the clerk of the corporation under oath, the said record, or a true and faithful copy thereof, together with the certificate and prescriptions, by virtue of which the liquors have been delivered; and any and every Apothecary or Druggist neglecting or failing to furnish such record or statement in writing, shall upon conviction forfeit and pay to the town of Princeton, the sum of fifty dollars for each and every offence, to be imprisoned in the county jail of said county until the fine and costs be paid.

Sec. 8th. The town Constable and Marshal and each of them is hereby authorized to call to his or their aid, in executing this ordinance, all such persons as the nature of the case may require, and any person or persons neglecting or refusing to do so when called upon by such Constable or Marshal, shall forfeit and pay to the town of Princeton, the sum of ten dollars for each and every offence.

Sec. 9th. Any person who shall attempt to obstruct or hinder any of the said officers in the discharge of their duty either under this or any other ordinance of said town of Princeton, shall be taken into immediate custody and upon trial and conviction before the Police Magistrate or any Justice of the Peace in said town, shall be fined twenty-five dollars and imprisoned in the county jail of said county until the fines and costs of proceeding shall be paid.

Sec. 10. This ordinance shall take effect and be in force from and after its publication in the Bureau County Republican, and all ordinances now in force which conflict with this ordinance, are hereby repealed, except that such ordinance or ordinances thus repealed shall continue in full force as to all violations, penalties and forfeitures, which had occurred under such repealed ordinance or ordinances, prior to this ordinance taking effect as aforesaid.

That on the 17th day of April A. D. 1863, a trial was had and evidence offered on the part of said Town, showing that four glasses of beer had been sold by said defendant at different times, to one man. But no testimony was adduced showing said beer to be acid, vinous or fermented, nor that the sale of said four glasses was a nuisance. The defendant introduced, as testimony in said case, a license from the United States collector of internal revenues of the district, wherein said Bureau court is included, to him to carry on the business or occupation of retail dealer in liquors in said Town of Princeton until the first day of September 1863, which license is dated September 1st 1862, and was ^{obtained} ~~held~~ by said Peter Bollig prior to the sale of said beer so sworn to in said suit. The jury, that was impaneled to try the issues between the parties to said suit rendered the following verdict, to wit:

"Town of Princeton
vs.
Peter Bollig

As the jury find Peter Bollig, the defendant, guilty of violating

P.D. 15

The People of the
State of Illinois
on the application
of Peter Bolley
under the Habeas
Corpus act
v.

Silas Battey
— o —

Filed Apr. 23, 1863
Skeland
Clerk.