No. 13594

Supreme Court of Illinois

Barnett

vs.

Pres.& Trustees of the

Town of New York

71641 7

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STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 142

Barrett
vs
Pasco et al
Remand

1359

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862

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 inconsistant 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.

7/8/9

140-1-2

Barnett

vs

Town of Newark

Brief of Plff in Error

Filed May 12. 1842

S. Sebastian

Clk

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D. P. JONES,
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7/8/9 140-1-2

Harris
vs
Town of Newark

Brief of Plff in Error

Filed May 12. 1842
J Selden
Clk

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vs.
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I.

The plaintiff in error admits the validity of the incorporation of the defendants in error, under the general law for the incorporation of towns and cities, and that the proceedings stated in the abstract were found on the books of the corporation without requiring proof of the same. See record, page 8.

II.

The President and Trustees of towns incorporated under the general law, may impose fines for a breach of their ordinances, and such fines may be recovered before any justice of the peace in an action of debt, in the name of the president and trustees, and collected by execution. See latter clause of the 8th section of the division entitled towns and cities, Scates' Comp., 197; also 24th Ill., page 22, Hamilton *vs.* The President and Trustees of Charthage.

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The city of Springfield is authorized to impose fines, penalties and forfeitures, for a breach of any ordinance, not exceeding one hundred dollars. See the 34th section of the 5th article of the Springfield charter, laws special sessions, 1840, p. 19. 24 Ill., p. 22.

V.

The 7th, 8th and 9th sections of an act entitled an act to extend the jurisdiction and powers of the president and trustees of the towns of Oswego and Newark in the county of Kendall, approved Feb. 18th, 1857. See private laws of Illinois, page 1331, reads as follows, to-wit: section 7. "The provisions of this act shall apply to, and confer upon, the corporation of the village of Newark, and the officer thereof, the same powers and jurisdiction that it does upon those of the town of Oswego, provided that the same be first submitted for approval to the voters thereof, by the president and trustees of said town, and shall receive their approval.

Sec. 8. It shall not be necessary for the president and trustees in any case in prosecuting for the violation of any ordinance, to file security for cost, nor shall it be necessary for them, in any case, to prove the fact of their incorporation, unless the samr be denied by affidavits in writing. The production of the record of the corporation, or a copy of any ordinance or proceeding of said corporation, certified to under the hand of the clerk, shall be deemed due proof of the passage of said ordinance, or the due publication thereof and authentication of said proceeding in the first instance, and all ordinances heretofore passed by said corporation, not inconsistent with this act, shall be and remain in full force if not inconsistent with the constitution of this State and the United States.

Sec. 9. This act shall be deemed a public act, shall be liberally construed in favor of the powers conferred therein, and shall be in force from and after its passage."

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The president and trustees of the town of Newark, did, on the 24th day of March, 1860, submit the said act to the voters of the town, for their approval, and the voters did unanimously apdrove of the same. See the bottom of 2d page of abstract.

VII.

The ordinance upon which this suit was brought, was passed on the 30th April, 1859, declaring the sale or giving away of any spirtuous, vinous, malt, fermented, mixed or intoxicating liquors, a nuisance, and that any person who should be guilty thereof, should forfeit and pay to the said town, the sum of Twenty Dollars, for each and every offence. See abstract page first and second.

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The corporate authories of any town in this State may have power to declare what shall be a nuisance, and to improve a fine for the violation of any ordinance to that effect.

Scates comp. sec. 2, page 200.
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IX.

A town incorporated under the general law may provide by ordinance against disposing of any liquors in a less quantity than one barrel.

16 Illinois, page 35, Byers et al. *vs.* the town of Olney.

X.

It is not necessary under the 8th section of the act before referred to, to prove the publiction or passage of any ordinance, but producing the corporate records, containing an ordinance is sufficient evidence to establish the fact of its due publication and authentication.

XI.

Your Honors will perceive by referring to the second page of the abstract that there appears to have been a vote taken on the adoption of the act before referred to, on the 29th day of May, 1858, which resulted in its rejection by two votes, but there is no certificate of the accuracy of that vote, or whether that is the true result. Neither were any notices of the election ever posted. Nearly two years afterwards the question was again submitted to the voters of Newark and then received their unanimous approval. See second page of abstract.

XII.

The only question I can see presented by the record is—Was the election held on the 24th day of March, 1860, legal? Or, in other words, had the president and trustees a right, under the act of the 18th of Feb., 1857, to submit the question of its approval to the voters, after it had once been submitted, and they had refused to accept it? In case your Honors should hold the evidence of the first election sufficient, I think they had a perfect right so to do.

Can any person read the act, and after giving it the "liberal construction" it enjoins, say it was the intention of the law-makers to give the people of Newark but one opportunity to vote upon the question and if it was then rejected, they should forever be debarred from accepting it, though every person in the Corporation should afterwards earnestly desire it?

There was no time set by the legislature when the vote should be taken, but it was a law of the State—a public act, to go into effect whenever the voters of the town of Newark should see fit to approve of it, by an election called for that purpose.

The Government did not withdraw the proposition when the voters refused to accept it in May, 1858. Neither is there anything in the act rendering it void in case it should once be rejected.

When I construe this statute by the rule laid down for the construction of statutes by Kent, in the first volume of his commentaries, page 464, where he says, "the object is to ascertain and carry into effect the intention of the legislature, and that several acts in pari materia, and relating to the same subject are to be taken together, and compared in the construction of them, because they are considered as having one object in view, and as acting upon one system."—It firmly establishes my opinion.

For illustration, take the general law for the incorporation of towns and cities, of which this act is a part. for the legislature in passing both, had the same object in view. In the 25th chapter of Purple's statutes, page 172, sections 1st and 2d, it provides that whenever the white male residents of lawful age of any town in this State, having not less than 150 inhabitants, shall wish to become "incorporated, for the better regulation of their internal police, it shall be lawful for the said residents, after having given ten days previous notice, to assemble together and decide by vote, whether they will become incorporated or not.

In case a town having 150 inhabitants should call a meeting according to the provisions of chapter 25, and should decide not to be incorporated; then afterwards when the number of inhabitants had increased to 500 or 1000, and the business of the town had increased in the same proportion, the inhabitants should assemble again, pursuant to the law, and decide to become incorporated. Would any attorney deny them the right to do so, on the ground that they had once voted on that question and decided not to be so incorpo rated?

In chapter 104 of Purple's statute, page 1135, sec. 2, it provides that the county court, on the petition of 50 legal voters of the said county shall cause to be submitted to the voters of the county, the question of township organization by ballot, and there is no provision allowing the inhabitants to hold more than one election for that purpose, yet no one questions the right of a county to hold an election, and adopt the township organization act, even though the voters of the same county had by ballot ten times before rejected the same.

If the voters of a county have the right to adopt the township organization af they have once rejected it. And the inhabitants of a town, who have previously by vote, refused to become incorporated, have a right to re-consider their vote, and become so incorporated when they see the interests of their town require it.

Have not the voters of Newark a right to adopt the act in question, when they see its salutary effect in the town of Oswego, or when their experience teaches them that the act is beneficial to their interests, although they had once rejected it?

I am unable to see any difference in the object the legislature had in view in passing the three laws just referred to.

All three were made for the better regulation of the internal police of counties or towns,

All three are submitted to the voters for their approval.

All three are public acts, and the one in question is to be "liberally construed in favor of the powers conferred therein." Is there any reason why they should be differently construed?

When the government offers to enter into a contract with the inhabitants of a town in the form of a charter, and the voters have a right to vote time after time on the proposition before they accept it? Can there be any reason assigned why, when the government offers to extend their rights and privileges under that charter, they should be limited to one vote?

Viewing this act in the worst light on the part of the defendants in error, and confining it to its most strict construction, it is only an extension of their chartered privileges, and the rules that would govern in the acceptance of a charter must govern in the acceptance of this act by the voters of Newark.

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The vote taken on the 29th of May, 1858, is void, there being no certificate of the clerk or judge of election that the election was ever held, or what the result of the election was. In order to make the returns of any election valid, the judge of the election or the clerk, or both, must certify to the accuracy of the returns.

XIV.

The plaintiff in error admitted on the trial, that the town of Newark was duly incorporated on the 10th day of Feb., 1849, under the law of 1845, (See the 8th page of the record, it having been left out of the abstract) and that the ordinance sued upon was duly upon the corporate record, (see the first page of the abstract) and that the plaintiff in error violated the ordinance, (see 3d page abstract) thereby waiving all proof of the incorporation of the town, the passage of the ordinance or its violation, and upon such admission the case was submitted to the court for judgment. Could the court below have done otherwise than to have found the plaintiff in error guilty?

IRUS COY,
Att'y for Def't in Error.

9 140

Barnett

vs

Town Newark

Filed May 14, 1862

G. Leland

Clk

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Defts. Brief Argt.

Filed May 14, 1842
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In chapter 104 of Purple's statute, page 1135, sec. 2, it provides that the county court, on the petition of 50 legal voters of the said county shall cause to be submitted to the voters of the county, the question of township organization by ballot, and there is no provision allowing the inhabitants to hold more than one election for that purpose, yet no one questions the right of a county to hold an election, and adopt the township organization act, even though the voters of the same county had by ballot ten times before rejected the same.

If the voters of a county have the right to adopt the township organization af they have once rejected it. And the inhabitants of a town, who have previously by vote, refused to become incorporated, have a right to re-consider their vote, and become so incorporated when they see the interests of their town require it.

Have not the voters of Newark a right to adopt the act in question, when they see its salutary effect in the town of Oswego, or when their experience teaches them that the act is beneficial to their interests, although they had once rejected it?

I am unable to see any difference in the object the legislature had in view in passing the three laws just referred to.

All three were made for the better regulation of the internal police of counties or towns,

All three are submitted to the voters for their approval.

All three are public acts, and the one in question is to be "liberally construed in favor of the powers conferred therein." Is there any reason why they should be differently construed?

When the government offers to enter into a contract with the inhabitants of a town in the form of a charter, and the voters have a right to vote time after time on the proposition before they accept it? Can there be any reason assigned why, when the government offers to extend their rights and privileges under that charter, they should be limited to one vote?

Viewing this act in the worst light on the part of the defendants in error, and confining it to its most strict construction, it is only an extension of their chartered privileges, and the rules that would govern in the acceptance of a charter must govern in the acceptance of this act by the voters of Newark.

XIII.

The vote taken on the 29th of May, 1858, is void, there being no certificate of the clerk or judge of election that the election was ever held, or what the result of the election was. In order to make the returns of any election valid, the judge of the election or the clerk, or both, must certify to the accuracy of the returns.

XIV.

The plaintiff in error admitted on the trial, that the town of Newark was duly incorporated on the 10th day of Feb., 1849, under the law of 1845, (See the 8th page of the record, it having been left out of the abstract) and that the ordinance sued upon was duly upon the corporate record, (see the first page of the abstract) and that the plaintiff in error violated the ordinance, (see 3d page abstract) thereby waiving all proof of the incorporation of the town, the passage of the ordinance or its violation, and upon such admission the case was submitted to the court for judgment. Could the court below have done otherwise than to have found the plaintiff in error guilty?

IRUS COY,
Att'y for Def't in Error.

9 142

Barnett
vs
Town of Newark

Defts. Bill of Exct.

Filed May 14, 1842
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Prepared

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM, 1862, AT OTTAWA.

SOLOMON C. BARNETT, Plaintiff in Error,
vs.
THE PRESIDENT & TRUSTEES OF THE TOWN OF NEWARK, Def'ts in Error.
} APPEAL FROM KENDALL.

BRIEF AND ARGUMENT OF DEFENDANTS IN ERROR.

I.

The plaintiff in error admits the validity of the incorporation of the defendants in error, under the general law for the incorporation of towns and cities, and that the proceedings stated in the abstract were found on the books of the corporation without requiring proof of the same. See record, page 8.

II.

The President and Trustees of towns incorporated under the general law, may impose fines for a breach of their ordinances, and such fines may be recovered before any justice of the peace in an action of debt, in the name of the president and trustees, and collected by execution. See latter clause of the 8th section of the division entitled towns and cities, Scates' Comp., 197; also 24th Ill., page 22, Hamilton *vs.* The President and Trustees of Charthage.

III.

Towns incorporated under the general law, possess the right to pass ordinances and by-laws, and have all the powers authorized under the laws and amendatory acts of the cities of Springfield and Quincy. Scates' Comp., 200, sec. 4; also 24th Ill., page 22.

IV.

The city of Springfield is authorized to impose fines, penalties and forfeitures, for a breach of any ordinance, not exceeding one hundred dollars. See the 34th section of the 5th article of the Springfield charter, laws special sessions, 1840, p. 19. 24 Ill., p. 22.

V.

The 7th, 8th and 9th sections of an act entitled an act to extend the jurisdiction and powers of the president and trustees of the towns of Oswego and Newark in the county of Kendall, approved Feb. 18th, 1857. See private laws of Illinois, page 1331, reads as follows, to-wit: section 7· "The provisions of this act shall apply to, and confer upon, the corporation of the village of Newark, and the officer thereof, the same powers and jurisdiction that it does upon those of the town of Oswego, provided that the same be first submitted for approval to the voters thereof, by the president and trustees of said town, and shall receive their approval.

Sec. 8. It shall not be necessary for the president and trustees in any case in prosecuting for the violation of any ordinance, to file security for cost, nor shall it be necessary for them, in any case, to prove the fact of their incorporation, unless the samr be denied by affidavits in writing. The production of the record of the corporation, or a copy of any ordinance or proceeding of said corporation, certified to under the hand of the clerk, shall be deemed due proof of the passage of said ordinance, or the due publication thereof and authentication of said proceeding in the first instance, and all ordinances heretofore passed by said corporation, not inconsistent with this act, shall be and remain in full force if not inconsistent with the constitution of this State and the United States.

Sec. 9. This act shall be deemed a public act, shall be liberally construed in favor of the powers conferred therein, and shall be in force from and after its passage."

VI.

The president and trustees of the town of Newark, did, on the 24th day of March, 1860, submit the said act to the voters of the town, for their approval, and the voters did unanimously apdrove of the same. See the bottom of 2d page of abstract.

VII.

The ordinance upon which this suit was brought, was passed on the 30th April, 1859, declaring the sale or giving away of any spirtuous, vinous, malt, fermented, mixed or intoxicating liquors, a nuisance, and that any person who should be guilty thereof, should forfeit and pay to the said town, the sum of Twenty Dollars, for each and every offence. See abstract page first and second.

VIII.

The corporate authories of any town in this State may have power to declare what shall be a nuisance, and to improve a fine for the violation of any ordinance to that effect.

Scates comp. sec. 2, page 200.
Also, sec. 5, page 196.

IX.

A town incorporated under the general law may provide by ordinance against disposing of any liquors in a less quantity than one barrel.

16 Illinois, page 35, Byers et al. *vs.* the town of Olney.

X.

It is not necessary under the 8th section of the act before referred to, to prove the publiction or passage of any ordinance, but producing the corporate records, containing an ordinance is sufficient evidence to establish the fact of its due publication and authentication.

XI.

Your Honors will perceive by referring to the second page of the abstract that there appears to have been a vote taken on the adoption of the act before referred to, on the 29th day of May, 1858, which resulted in its rejection by two votes, but there is no certificate of the accuracy of that vote, or whether that is the true result. Neither were any notices of the election ever posted. Nearly two years afterwards the question was again submitted to the voters of Newark and then received their unanimous approval. See second page of abstract.

XII.

The only question I can see presented by the record is—Was the election held on the 24th day of March, 1860, legal? Or, in other words, had the president and trustees a right, under the act of the 18th of Feb., 1857, to submit the question of its approval to the voters, after it had once been submitted, and they had refused to accept it? In case your Honors should hold the evidence of the first election sufficient, I think they had a perfect right so to do.

Can any person read the act, and after giving it the "liberal construction" it enjoins, say it was the intention of the law-makers to give the people of Newark but one opportunity to vote upon the question and if it was then rejected, they should forever be debarred from accepting it, though every person in the Corporation should afterwards earnestly desire it?

There was no time set by the legislature when the vote should be taken, but it was a law of the State—a public act, to go into effect whenever the voters of the town of Newark should see fit to approve of it, by an election called for that purpose.

The Government did not withdraw the proposition when the voters refused to accept it in May, 1858. Neither is there anything in the act rendering it void in case it should once be rejected.

When I construe this statute by the rule laid down for the construction of statutes by Kent, in the first volume of his commentaries, page 464, where he says, "the object is to ascertain and carry into effect the intention of the legislature, and that several acts in pari materia, and relating to the same subject are to be taken together, and compared in the construction of them, because they are considered as having one object in view, and as acting upon one system."—It firmly establishes my opinion.

For illustration, take the general law for the incorporation of towns and cities, of which this act is a part, for the legislature in passing both, had the same object in view. In the 25th chapter of Purple's statutes, page 172, sections 1st and 2d, it provides that whenever the white male residents of lawful age of any town in this State, having not less than 150 inhabitants, shall wish to become "incorporated, for the better regulation of their internal police, it shall be lawful for the said residents, after having given ten days previous notice, to assemble together and decide by vote, whether they will become incorporated or not.

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Viewing this act in the worst light on the part of the defendants in error, and confining it to its most strict construction, it is only an extension of their chartered privileges, and the rules that would govern in the acceptance of a charter must govern in the acceptance of this act by the voters of Newark.

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IRUS COY,
Att'y for Def't in Error.

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.

142-452

Barnett
vs
Town of Newark

Brief of Plff. in
Error

Filed May 12. 1862.
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

SOLOMON C. BARNETT
vs.
THE PRESIDENT AND TRUSTEES OF THE TOWN OF NEWARK.

Appeal from Kendall.

ABSTRACT OF THE RECORD.

This was an action commenced before a Justice of the Peace to recover the penalty for violating an Ordinance of the town of Newark, against selling or giving away liquor. Judgment was rendered by the Justice against the appellant, who took an appeal from the same to the Circuit Court.

6 Jury waived and cause submitted to the Court for trial.

9 On the trial it was admitted that the record books of the town of Newark contained the following proceedings of the Board of Trustees of the town of Newark, and parts of Ordinances of said town, viz:

"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 February 18, 1857, entitled 'An act to extend the jurisdiction and powers of the President and Trustees, and constables of the Town of Oswego and Newark, in the County of Kendall,' 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.'

An Ordinance passed by the President and Trustees of the town of
10 Newark, April 30th, 1859.

Sec. 2. "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, chattles, 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, ferment-

ed, 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."

"Clerk's 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 Constables of the town of Oswego and Newark, in the County of Kendall, and State of Illinois, at which election, W. H. Lewis was Moderator, and Chas. Flinn, 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

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Clerk of the Board of Trustees for the Corporation of Newark."

11 Proceedings of the President and Board of Trustees of the town of Newark, March 13th, 1860:

"It was ordered that the Clerk post three notices at 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 town of Oswego and Newark, in the County of Kendall.' Said election to be held between the hours of one and five o'clock in the P. M., and the form of ballot to be 'for the act and against the act.'"

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

ALBERT COOK,
Clerk of the Corporation."

"March 24th, 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 and 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 and 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,.....39 votes.
"Against the act,.....none.

12 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.*

It was further admitted that the appellant sold one gallon of whiskey to some man working on the road in the village of Newark, in the month of June, 1861, and within the limits of the corporation. This was all the evidence in the case.

The Court assessed the plaintiff's damages at $20, and rendered judgement against the defendant for that sum and costs.

The defendant moved for a new trial, which motion was overruled by the Court.

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15 ERRORS ASSIGNED.

The Court erred, 1st, in finding the issue in favor of the plaintiff and against the defendant.

2d. In rendering judgment against the defendant.

3d. In overruling the motion for a new trial.

D. P. JONES,
Attorney for Appellant.

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SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

SOLOMON C. BARNETT
vs.
THE PRESIDENT AND TRUSTEES OF THE TOWN OF NEWARK.

Appeal from Kendall.

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10 An Ordinance passed by the President and Trustees of the town of Newark, April 30th, 1859.

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15 The Court erred, 1st, in finding the issue in favor of the plaintiff and against the defendant.

2d. In rendering judgment against the defendant.

3d. In overruling the motion for a new trial.

D. P. JONES,
Attorney for Appellant.

142

Barnett
vs
Town Newark

Filed May 13, 1862
L. Lewis
Clk

SUPREME COURT OF ILLINOS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1862

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 inconsistant 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.)

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Att'y for Appellant.

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Barnett
vs
Town of Newark

Brief of Plff
in Error

Filed May 12. 1862
L. Leland
Clerk

SUPREME COURT OF ILLINOIS,

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ALBERT COOK,
Clerk of the Corporation."

"March 24th, 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 and 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 and 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,.....39 votes.
"Against the act,.....none.

12 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.*

It was further admitted that the appellant sold one gallon of whiskey to some man working on the road in the village of Newark, in the month of June, 1861, and within the limits of the corporation. This was all the evidence in the case.

The Court assessed the plaintiff's damages at $20, and rendered judgement against the defendant for that sum and costs.

The defendant moved for a new trial, which motion was overruled by the Court.

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15 ERRORS ASSIGNED.

The Court erred, 1st, in finding the issue in favor of the plaintiff and against the defendant.

2d. In rendering judgment against the defendant.

3d. In overruling the motion for a new trial.

D. P. JONES,
Attorney for Appellant.

142
Barrett
vs
Tom Newan

Salem May 13. 186[illegible]
L Lewis
Atty

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

SOLOMON C. BARNETT
vs.
THE PRESIDENT AND TRUSTEES OF THE TOWN OF NEWARK.

Appeal from Kendall.

ABSTRACT OF THE RECORD.

This was an action commenced before a Justice of the Peace to recover the penalty for violating an Ordinance of the town of Newark, against selling or giving away liquor. Judgment was rendered by the Justice against the appellant, who took an appeal from the same to the Circuit Court.

6 Jury waived and cause submitted to the Court for trial.

9 On the trial it was admitted that the record books of the town of Newark contained the following proceedings of the Board of Trustees of the town of Newark, and parts of Ordinances of said town, viz:

"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 February 18, 1857, entitled 'An act to extend the jurisdiction and powers of the President and Trustees, and constables of the Town of Oswego and Newark, in the County of Kendall,' 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.'

An Ordinance passed by the President and Trustees of the town of
10 Newark, April 30th, 1859.

Sec. 2. "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, chattles, 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, ferment-

ed, 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."

"Clerk's 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 Constables of the town of Oswego and Newark, in the County of Kendall, and State of Illinois, at which election, W. H. Lewis was Moderator, and Chas. Flinn, 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 Proceedings of the President and Board of Trustees of the town of Newark, March 13th, 1860:

"It was ordered that the Clerk post three notices af 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 town of Oswego and Newark, in the County of Kendall.' Said election to be held between the hours of one and five o'clock in the P. M., and the form of ballot to be 'for the act and against the act.'"

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

ALBERT COOK,
Clerk of the Corporation."

"March 24th, 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 and 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 and 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,.....39 votes.
"Against the act,.....none.

12 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.*

It was further admitted that the appellant sold one gallon of whiskey to some man working on the road in the village of Newark, in the month of June, 1861, and within the limits of the corporation. This was all the evidence in the case.

The Court assessed the plaintiff's damages at $20, and rendered judgement against the defendant for that sum and costs.

The defendant moved for a new trial, which motion was overruled by the Court.

ERRORS ASSIGNED.

15 The Court erred, 1st, in finding the issue in favor of the plaintiff and against the defendant.

2d. In rendering judgment against the defendant.

3d. In overruling the motion for a new trial.

D. P. JONES,
Attorney for Appellant.

142 — 9

Barnett
vs
The Pres. & Trustees
Town Newark

Abstract

Filed May 13. 1842
S Selden
Clk

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

Solomon C Barnett
vs
The President and Trustees of the Town of Newark

Appeal from Kendall

And now comes the said defendants by Asus Coy their Attorney and say that by record and proceedings aforesaid and in the rendition of the judgment aforesaid there is no Error and therefore they pray that the judgment may be sustained.

Asus Coy
Defts Atty

State of Illinois
142
Supreme Court
Third Grand division
April Term 1862

Solomon C. Bonnett
vs
The President & Trustees of the Town of Newark

Joinder

Filed april 25th 1862
L. Leland
Clerk

1 United States of America
State of Illinois } ss
Kendall County

Pleas 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 thereof begun and held at the Court House
in Oswego in said County on the thirteenth day of
January A. D. 1862 being the second Monday of January
A.D. 1862 and the Eighty eighth year of the Independence
of the United States of America

Present The Hon. M. E. Hollister Judge Oswego
David P. Jones States Atty.
G. M. Hallenbeck Clerk
Dwight Ladd Sheriff

Attest G. M. Hallenbeck Clerk

Court opened by Proclamation.

Be it Remembered that heretofore to wit on the
19th day of August A. D. 1861 there was filed
in the office of the Clerk of the Circuit Court
in and for said County a Transcript of proceedings
in a certain Matter in the Words and figures following
that is to said,

2

State of Illinois }
Kendall County } ss The People of the State of Illinois to any Constable of said County, Greeting

You are hereby commanded to summon Solomon C. Barnett to appear before me at my office in Newark on the 10th day of July AD. 1861 at 1 Oclock P.M. to answer the complaint of the President and Trustees of the Town of Newark in 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 and seal this 3d day of July AD 1861.

Asa Manchester (Seal)
Justice of the peace.

The following is endorsed on the back of the above.

Demand	$100.00
Costs	$ ----- 80
Total	

Served by reading to the within named defendant this 6th day of July 1861.

Service	$ ---- .25
Mileage	——— .5
Total	30

Alex Hamilton
Constable.

3

The following is a copy of the Justice's Transcript.

State of Illinois } ss.
Kendall County }

The President & Trustees of the Town of Newark
vs
Solomon C. Burnett

Justice Court before Asa Manchester,

Summons issued July 3d 1861, Returnable July 10th 1861 at 1 oc, P.M. Summons returned July 10th 1861, Served by reading to the Deft July 6th 1861

Alexander Hamilton Const. fees 30 cts

One Subp. issued on the part of plaintiffs returned by reading to within named persons

Alexander Hamilton Const. fees —— 73½ cts

July 10th 1861, Parties appear by counsel and answer to their names. Plaintiff declares in action of Debt for the breach of an ordinance passed April 30th 1859. 12 Section.

Deft. moves to dismiss there not being security given for costs, 2d Because there is no ordinance authorizing a conviction under an action of debt, 3d Because there is a variance between the summons and the ordinance, 4. There is no corporation, and not guilty, Motion not granted,

Henry Kennady George Groaner Joel French sworn as witnesses claim fees.

After hearing the testimony Court considers adjudges and determines that the plaintiffs have judgment against the defendant for eighty dollars debt and three dollars & 68½ cents and that they have execution therefor.

I Asa Manchester a Justice of the peace do hereby certify that the above is a true copy of the proceedings had before me as appears on my docket; and herewith accompanying are all the papers thereunto belonging or appertaining thereunto,

Newark, July 15th 1861

Asa Manchester J.P.

Plaintiffs Costs	
Iss. Sum.	25
Docket	20
Subp	25
4 Oath	20
8 Judgs	25
Const. fees	
S. Sum.	25
M	5
Subp	73½
Witness fees	1.50
Deft. costs	
Transcript	25
Certificat	25

Appeal Bond filed July 12. 1861 sign S. C. Burnett & John Hollenbacke

Filed Aug. 19. 1861. G. M. Hollenbacke Clerk.

The following is a copy of the Appeal Bond,

Know all men by these presents that we Solomon C. Barnett and John Hollenback are held and firmly bound unto the President & Board of Trustees of the Town of Newark in the penal sum of One hundred and seventy dollars lawful money of the United States for the payment of which well & truly to be made we bind ourselves our heirs and administrators jointly severally and firmly by these presents,

Witness our hands and seal this 12th 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 tenth day of July A.D. 1861. before Asa Manchester a Police Magistrate in and for the Town of Newark County of Kendall and State of Illinois recover a Judgment against the above bounder Solomon C. Barnett for the sum of eighty Dollars; from which Judgment the said Solomon C Barnett has taken an appeal to the Circuit Court of the County of Kendall aforesaid & State of Illinois. Now if the said Solomon C. Barnett shall prosecute his appeal with effect and pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force & effect.

S. C. Barnett (Seal)
John Hollenback (Seal)

Filed Aug. 19. 1861.
G. W. Hollenbeck
Clk.

5

State of Illinois
Kendall County } ss

Kendall County Circuit
Court September term 1861

President & Trustees
of the Town of Newark
vs
Solomon C. Barnett

I Irus Coy hereby enter the appearance of the Plaintiff in the above entitled cause for trial at the next term of said Court

For the Plaintiff
Irus Coy
Pltffs Atty.

Filed Aug. 19. 1861
G. W. Hollenbeck
Clerk.

6 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 Newark
v.
Solomon C. Barnett
} Appeal

And now come the Plaintiffs by Cray their attorney and the said Defendant in his own proper person also comes and by agreement of the parties a Jury in this cause is waived and the same submitted to the Court for trial and the Court after hearing the Evidence, not being fully advised in the premises takes this 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,

The President and Trustees of the Town of Newark
v.
Solomon C. Barnett
} Appeal

And now comes 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

Defendant the sum of Twenty Dollars as well as the Costs by them in this behalf Expended excepting nevertheless one half of the costs Expended herein in this Court and that they have Execution therefor.

And Afterward to wit on the 23d day of January the same being still one of the days of the January Term of the Court aforesaid - the following among the proceedings were had in said Court in said Cause and entered of Record to wit,

The President and Trustees of the Town of Newark
vs.
Solomon C. Barnett

Appeal

And now comes the Defendant by Parks his attorney and Moves the Court for a new trial herein and thereupon comes again the Plaintiffs by Coy their attorney and the Court after hearing the parties in Relation to the Defendants motion for a New Trial herein being fully advised in the premises Consider that said Motion be overruled and a new trial denied.

It is therefore considered by the Court that the Plaintiffs Nil have and recover of and from the said Defendant said sum of Twenty Dollars as well as the costs by them in this behalf Expended Except one half of the costs in the Court and that they have Execution therefor. And thereupon again comes the said Defendant and prays an Appeal to the Supreme Court which said Appeal is granted upon Condition that he enter into Bond in the penal sum of one Hundred Dollars with Selah Goodley as security

8

And afterward on the 28th day of January A. D. 1862 the same being one of the days of Court aforesaid the Defendant filed herein his Bill of Exceptions in the words and figures following to wit:

The President & Trustees of the town of Newark
vs
Solomon C. Burnett

Kendall County Circuit Court,
January Term A.D. 1862

Be it remembered that upon the trial of the above case it was admitted that the records of said Plff showed that the Village of Newark was incorporated under the law of 1845.— That the same was incorporated on the 10th day of February A.D. 1849, 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 Prest & Board of Trustees of the Town of Newark at a Meeting held May 17th 1858

On motion of A. W. 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. 18th 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 at the public Schoolhouse on the 29th day of May, instant, between the hours of One & five Oclock P.M. Ballot to be "For the Act" or "Against the Act"

Sec. 2d of an Ordinance passed by the Prest & Board of Trustees of the town of Newark April 30th 1859.

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

9 or who shall upon the sale barter or exchange of any goods chattels wares merchantize 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 & 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 & every offence

Clerks office May 29th 1858

At an Election held at the public Schoolhouse 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 & Constables of the towns of Oswego & Newark in the County of Kendall in the State of Illinois, at which election W. H. Lewis was Moderator And Chas. Winne 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 the Town of Newark

Part of the proceedings of the Prest. & 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 to extend the Jurisdiction & powers of the President & Trustees and Constables of the towns of Oswego and 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 form of Ballot to be For the Act — & — Against the act. —

March 14th 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 Dry good Store, One copy of each at N.P. Barnard's Store.

Albert Cook
Clerk of the Corpn —

March 24th 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 and 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 & powers of the President and Trustees & Constables of the towns of Oswego & 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

11 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 24th 1860

Attest
Albert Cook
Clerk of the election

Saml S. Wright
Judge of the election

I hereby certify that the above and foregoing are true copies from the Book of Records of the corporate town of Newark now in my possession,

Newark January 21st 1862

Albert Cook
Clerk of the Corporation,

It was also admitted that Defendant sold one gallon of whiskey in the limits of the Village of Newark in June AD 1861 and within the limits of the corporation, which was all the testimony offered in the case & all the facts existing, The Court (a Jury having been waived) gave judgment upon those facts against the defendant twenty dollars as will appear by the records in this case, To the ruling of the Court in rendering such judgment the Defendant at the time excepted and prays that this his Bill of exceptions may be signed & sealed by the Court. Which is done

M. E. Hollister (Seal)

Filed Jan. 23. 1862.
G. M. Hallenbaek Clk.

State of Illinois } ss
Kendall County } I George W. Hallenbeck Clerk of the Circuit Court in and for said County do hereby certify that the above and foregoing is a true and correct transcript and copy of all proceedings had and entered of Record in said Court and a copy of all the files remaining in my office in the Matter of the President and Trustees of the Town of Newark Plaintiffs and Solomon C. Burnett Defendant,

Witness Geo. W. Hallenbeck Clerk of the Circuit Court and the seal thereof at Boaz in said County the 26th day of March A.D. 1862.

G. W. Hallenbeck
Clerk.

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

Solomon C. Burnett
vs
the President & Trustees of the Town of Newark } Appeal from Kendall

And says comes the said Solomon C. Burnett by D. P. Jones his attorney & says that in the record & proceedings aforesaid & in the rendition of the judgement 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 judgement against the defendant

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

Wherefore, and for other errors in the record & proceedings aforesaid, he prays that the judgement aforesaid may be reversed, annulled & for nought esteemed

D. O. Jones
Attorney for Appellant

Solomon & Bennett
vs
Rev. & T. R. Church
Record

Filed Oct. 29th 1862
C. Cleland
Clk.