

13868

No. _____

Supreme Court of Illinois

Kimball

vs.

People

WILLIAM C. KIMBALL, Appellant. }
 vs. } Appeal from the Court of Common
 THE PEOPLE, &C. } Pleas of the City of Elgin, Kane
 County.

ABSTRACT.

Page 1 At the June Term, A. D. 1857, of the Court of Common Pleas of
 2 the City of Elgin, in Kane County, Illinois, an Indictment was found
 3 therein against the Appellant for selling Liquor without License
 4 within the said City. The Indictment is in the usual form, and
 5 charges a violation of the General Law of the State, inflicting a pen-
 6 alty of \$10 for selling Rum, Wine, Gin, Brandy, Whiskey, Vincus,
 7 Spirituous, and Mixed Liquors, by a less quantity than one gallon, at
 8 and within the limits of said City of Elgin.

5 June 10th, Capias issued, Appellant arrested and brought into Court.
 6 7 June 13th, on Appellants application, case was continued to the next
 8 Term of the Court, and he entered into recognizance for his appear-
 8 ance. At the September Special Term, A. D. 1857, of said Court,
 9 11 the Appellant by his Attorney, moved to quash the said Indictment,
 12 on the ground, that the General Laws of the State authorizing the
 granting of license, and inflicting penalties for selling without license,
 13 were not in force within said City limits, but were (by the Act
 entitled, "An Act to amend, alter, and revise the manner, name, or
 style and corporate powers of the Town of Elgin, approved February
 28th, 1854," and the Act entitled "An Act to amend an Act, entitled
 an Act to amend, alter, and revise the name or style and corporate
 powers of the Town of Elgin, approved February 28th, 1854, and to
 legalize said Act incorporating said Town as a City, and all official
 Acts of the Mayor and Council by virtue hereof, approved February
 15th, 1855," in connection with the Ordinances and Laws passed by
 the Council of said City, and in force in said City,) repealed as to said
 13 City, and that the only law in force upon the subject of selling Liquor
 and inflicting penalties therefor, was the Ordinances of the City Council
 of said City, and that the Court had no jurisdiction of the case.

13 It was then agreed between the Attornies for the Appellant and
 the Appellee, that the questions involved in the reasons assigned for
 quashing the Indictment, should be considered as legally and properly
 presented and pending for the Court to decide.

That a City Government was duly organized under the Acts of the
 Legislature, in relation thereto, that before and at the time the alleged
 sales within the City limits of Liquor without license are charged
 to have been made, and to recover penalties under the General Laws
 of the State, this Indictment was found, an ordinance or law of the
 City was made and in force within the City limits upon the subject of
 Liquor.

(By agreement of Counsel, a printed copy of the Ordinances of the
 City were attached to the bill of exceptions and to the record, and
 made a part of the record. These Ordinances prohibit entirely the
 sale of Liquor, or having it in charge for sale in the City, refuses to
 license, and inflicts a penalty of \$25 for violating the Ordinance,) and
 14 that all technical objections to manner of presenting the questions,
 should be waved.

9 The motion was argued, and case taken under advisement and continued.
At the December Term, A. D. 1857, the Court overruled the
9 10 F motion, the Appellant excepted.

The Appellant pleaded not guilty to the Indictment. A Jury was empannelled, and the prosecution called Charles W. Bennett, who testified as follows, to wit: "I may have bought liquor at the Waverly House. Howard & Kimball, the defendants, keep it. Can't say whether I ever paid for it. The Waverly is kept in this City. I have called for liquor in the Saloon below at the bar. I have got liquor and drank it there several times. Don't know how many times. Got liquor or what tasted like liquor, before the last June Term of this Court, and within eighteen months. Have never seen Mr. Hanson drink liquor there. I have seen John Taylor call for and drink liquor there frequently; that is my best recollection; he called for and drank liquor there before the first of June last, and within eighteen months. I have seen other persons call for and drink liquor there before that time a great many times. I don't know that I saw John Taylor or any other person pay for liquor at any of the times mentioned. Can't tell on what particular occasion John Taylor drank liquor there, or any other person. I am swearing to the best of my recollection."

The prosecution here rested, and the defense also rested, and the above is all the evidence given in the case.

15 16 The Appellant asked the Court to give the following instruction.

"That before you can find Defendant guilty, you must believe from the evidence, that, not only liquor was handed to a person who asked for it, but that the liquor was paid for or charged to some one."

16 Which the Court refused, to which ruling the Appellant excepted.

10 The Jury found Appellant guilty as charged in the 2nd, 3rd, and 4th counts of the Indictment.

11 16 Motion for new trial by Appellant, for reasons that the evidence was insufficient to sustain the verdict, and refusal of the Court to instruct the jury as asked, which motion was overruled, and exceptions thereto
10 then taken, and judgment entered by the Court against Appellant for \$30 and costs.

11 16 The Appellant then moved the Court to arrest the judgment for reasons before assigned for quashing the said Indictment, which motion
17 the Court overruled, and the Appellant excepted.

Whereupon, to wit: December 23rd, 1857, (same day judgment was entered,) Appellant prayed an appeal to this Court, which was granted
11 by the Court on Appellant's filing bond in penalty of \$300, within
18 thirty days.

January 6th, 1858, within time bond was filed as required and approved.

11 to 17 Bill of exceptions was filed and approved by the Court.

