

No. 12561

Supreme Court of Illinois

Kimball

vs.

People

~~181~~
William C. Kimball
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The Receipt &c

10 P.D

1858

12561

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Page 1.

United States of America
State of Illinois Kane County
City of Elgin

Pleas before the
Honorable Charles H Morgan

Judge of the Court of Common Pleas of the
City of Elgin in the County of Kane and State
of Illinois and presiding Judge of the said Court
at a Term of said Court began and held
at the Court Room in Elgin in said City on
the 8th day of June in the Year of Our Lord
One thousand Eight hundred and fifty seven.

Present The Honorable Charles H Morgan Judge
George E. Corrigan Sheriff

Attest

R. W. Padelford Clerk

Be it remembered That whereas heretofore
to wit on the 10th day of June AD 1857.
An Indictment was presented to the Court
by the Grand Jury (duly summoned and
sworn for the June Term of said Court of
Common Pleas of the City of Elgin in Kane County
aforesaid AD 1857) against William C. Kimball
for selling Spirituous Liquor without a license
and which said Indictment was filed in
said Court by the Clerk thereof which said
Indictment was in the words and figures follow-
ing to wit:

State of Illinois } Of the June Term of the Court of
 County of Kane } Common Pleas of the City of Elgin
 City of Elgin } in the year of Our Lord one Thousand
 } eight hundred and fifty seven.

The Grand Jurors chosen selected and sworn in and for the City of Elgin, County of Kane in the name and by the authority of the People of the State of Illinois, upon their oaths present: That William C. Kimball late of said County on the first day of January in the year ^{of our Lord} one thousand eight hundred and fifty seven at and within the said City of Elgin County of Kane although he had not then and there a legal license to keep a Grocery, unlawfully did then and there sell Rum, wine, Gin, Brandy, Whisky, vinous, Spirituous and mixed liquors, by a quantity less than one gallon to Joseph Hanson then and there being; Contrary to the form of the Statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois.

And the Jurors aforesaid upon their oaths aforesaid, in the name and by the authority aforesaid, do further present: That William C. Kimball

late of the City of Elgin and County of Kane on the 10th day of January in the Year of Our Lord One thousand Eight hundred and fifty seven. at and within the said City of Elgin County of Kane unlawfully did Barter, sell and Exchange Rum, wine, Gin, Brandy, Whisky, vinous, Spirituous and mixed liquors by a less quantity than one gallon, to Charles W. Bennett he, the said William C. Kimball not then and there having a legal license to keep a Grocery, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois

And the aforesaid Jurors, upon their oaths aforesaid, in the name and by the authority aforesaid do further present: That William C. Kimball late of the City of Elgin County of Kane on the 20th day of January in the Year of Our Lord one thousand eight hundred and fifty seven at and within the said City of Elgin County of Kane unlawfully did barter sell and Exchange Rum, wine, Gin, Brandy, Whisky, vinous, Spirituous and mixed liquors by a less quantity than one gallon

to John Taylor he the said William C. Kimball not then and there having a legal license to keep a grocery, Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the same People of the State of Illinois.

And the Jurors aforesaid, in the name and by the authority aforesaid, upon their oaths aforesaid do further present: That William C. Kimball late of the City of Elgin County of Kane on the first day of February in the year of Our Lord one thousand eight hundred and fifty seven at and within the said City of Elgin County of Kane aforesaid not having then and there a legal license to keep a grocery did then and there sell Rum, Wine, Gin, Brandy, Whisky, Vinous, Spirituous and mixed liquors by less quantities than one gallon to some person and persons to the Jurors aforesaid unknown Contrary to the form of the Statute in such case made and provided and against the peace and dignity of the same People of the State of Illinois.

E. J. Joslyn

City Attorney in and for
the City of Elgin

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Upon the back of which Indictment
is the following endorsement to wit:

A True Bill. J. B. Smith foreman of Grand Jury
Witnesses Ruggles, J. Hanson Bennett John Taylor
John Connor — E. S. Joslyn City Attorney for the
City of Elgin

And afterwards to wit: on the same
10th day of June AD 1857 a Capias was
issued by the Clerk of said Court which
was in the words and figures following
to wit

State of Illinois }
Kane County }
City of Elgin p: } The People of the State of Illinois
to the Sheriff of said County,
Greeting: We command you, that
you, take the body of W^m C. Kimball
if he shall be found in the City of Elgin,
and safely him keep so that he be and appear
before the Court of Common Pleas of the City
of Elgin, in said County for the with now
holden at the Court House in Elgin in
said City to answer an Indictment for

for selling Spirituous Liquors

And have you then and there
this writ, with an endorsement
thereon, in what manner you shall
have executed the same.



Witness Rodolphus W. Padelford Clerk
of our said Court and the seal
thereof, at Elgin, in said County,
this 10th day of June AD. 1857.

R. W. Padelford Clerk

Upon the back of which Capias is the
following endorsement to wit:

This writ executed by arresting the within
named W^m C. Kimball & bringing him into
Court June 13th 1857.

Fees

Serv .50

Travel 5

Ret $\frac{10}{65-}$

G. E. Corwin Sheriff

Kane Co.

And afterwards to wit: on the 13th day
of June AD 1857. The same being one of
the days of the aforesaid Court of Common
Pleas of the City of Elgin at the said Term thereof
and entered into Recognizance which Recognizance

is in the words and figures following to wit:

The People of the State of Illinois vs William C. Kimball	}	Indictment for Selling Liquor
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This day comes into Open Court William C. Kimball and acknowledges himself to owe and be indebted to the People of the State of Illinois in the penal sum of One hundred dollars to be levied of his goods and chattels, lands and tenements Yet void upon condition that the said William C. Kimball be and appear before the Court of Common Pleas of the City of Elgin from day to day to answer an Indictment preferred against him by the People of the State of Illinois for selling spirituous Liquor, and not depart said Court without leave.

And afterwards to wit on the ^{thirteenth} 13th day of June being one of the days of the aforesaid Court of Common Pleas of the City of Elgin, the following among other proceedings were then and there had and entered of record, to wit:

The People of the
State of Illinois

vs

William C. Kimball

Indictment for Selling Liquor

This day comes the defendant by J. S. Wilcox his Attorney files his Affidavit and makes a motion for a continuance for the term — The Court being fully advised grants the motion — defendant to enter into Recognizance in the sum of one hundred dollars to appear at the next term of this Court to answer said Indictment —

And afterwards to wit: on the 23^d day of September A.D. 1857. The same being one of the days of the aforesaid Court of Common Pleas of the City of Elgin at the September Special Term thereof A.D. 1857. the following among other proceedings were then and there had and entered of record to wit: —

The People of the
State of Illinois

vs

William C. Kimball

Indictment for Selling Liquor

This day come the People by E. S. Joshua City Attorney and the defendant

by S. Wilcox his Attorney who submit an agreed motion covering plea in abatement for want of Jurisdiction

And afterwards to wit on the 28th day of September AD 1857. The same being one of the days of the aforesaid Court of Common Pleas of the City of Elgin at the September Special Term thereof AD 1857. the following among other proceedings were then and there had, and entered of record to wit:

The People of the State of Illinois	}	Indictment for Selling Liquor
vs William C. Kimball		

This day comes on to be argued the agreed motion of the defendant covering plea in abatement for want of jurisdiction - After hearing the argument of Council the Court take until the next term for decision

And afterwards to wit on the 15th day of December AD 1857. The same being one of the days of the aforesaid Court of Common Pleas of the City of Elgin at the December Term thereof AD 1857. the following among other proceedings

were then and there had and entered of record, to wit:

The People of
vs
William C. Kimball } Indictment for selling Liquor

The motion argued at the September^{Term}, covering a plea in abatement for want of jurisdiction - The motion is overruled by the Court - whereupon the defendant by his attorney, S. Wilcox excepts -

And afterwards to wit on the 23^d day of December AD 1857, the same being one of the days of the said Court at the said Term thereof the following among other proceedings were then and there had and entered of record to wit:

The People of the State of Illinois
vs
William C. Kimball } Indictment for Selling Liquor
This day comes the People of the State of Illinois by Joselyn C. Attorney of the City of Elgin and the defendant by Wilcox his attorney also come and say for a Plea that he is not guilty, and on motion of the People of the State of Illinois It is ordered by the Court that a jury come; whereupon a jury of good and lawful men to wit: (agreed to try with six jurors) James Hunter, William Sanders, Henry Sherman, William Cram, Charles Targwell, Charles Bradford being legally elected tried & sworn also come, and after hearing the evidence argument of counsel and instructions of the Court, retire under the charge of a sworn Officer of the Court to consider of their verdict: Subsequently return into Court and for a verdict upon their oaths say that we the jury find the defendant guilty on the second third & fourth Counts of the Indictment

It is therefore considered by the Court that the defendant be fined thirty dollars according to the form of the Statute in such case made and provided. And that the People of the State of Illinois have and recover from the defendant the sum of thirty dollars and their costs in this Suit expended, and have execution therefor.

Thereupon the defendant moves for a new trial, which is overruled, and thereupon the defendant moves an arrest of judgment for reasons heretofore assigned for cause to quash the Indictment, which is ^{also} overruled. The defendant prays an appeal which is granted upon filing bonds for the sum of \$300. within thirty days, to be approved by the Clerk -

And whereas afterwards to wit on the 28th day of December A.D. 1857 a Bill of Exceptions was filed in the Office of the Clerk of said Court which was in the words & figures following to wit:

State of Illinois	{ ss. }	Court of Common Pleas
City of Elgin Kane County		of the City of Elgin

William C. Kimball	{ }	Indictment for selling Liquor without a License -
at		
The People H		

Be it remembered that at the September Special term of said Court the said defendant appear in said cause and by his Attorney moved the Court to quash the Indictment in this case - For the reasons following:

1st That the General laws of this State authorizing the granting of licenses to sell

Spirituous liquors and the general laws
 providing penalties for selling liquors without
 licenses (under which this indictment was
 found) were not in force in the City of Elgin
 but were (by the act entitled "An act to amend
 alter & revise the ~~managers~~ name or style and
 corporate powers of the Town of Elgin approved
 February 28th 1854 & the act entitled "An act to
 amend an act entitled an act to amend
 alter & 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 appro-
 ved February 15th 1855." in connection
 with the ordinance & laws passed by the Council
 of said City and in force in said City). repealed
 and that the only law inflicting penalty for
 selling liquor in force in the City was the laws
 and ordinances of the City Council and
 as the fine inflicted and the manner of
 collecting it under the said laws and
 ordinance are different from the
 penalty & manner of collecting in this
 proceeding by indictment - No offence
 could have been committed by the
 defendant within the City limits
 of Elgin which would render him liable to this

An Ordinance Supplementary to "An Ordinance relating to Spirituous and Intoxicating Liquors," passed August 7th, 1855.

Be it Ordained by the City Council of the City of Elgin :

Sec. 1. That the City Council may license one or more Druggists of good moral character, to sell spirituous, intoxicating or mixed liquors, within the City, for sacramental, medicinal, mechanical and artistic purposes only, which license, when ordered by the City Council, shall be issued under the Corporate seal, signed by the Mayor and countersigned by the Clerk, and shall be valid for the time specified therein, provided, the person or persons to whom such license shall be issued, shall faithfully comply with all the regulations herein contained or which may be made by the City Council, and shall faithfully observe the Ordinance of the City. Before a license shall be issued the applicant shall pay into the City treasury such sum as shall be fixed by the City Council, and shall enter into bond with two sureties to be approved by the Mayor, in the penalty of five hundred dollars, conditioned for the faithful observance by the applicant of the ordinances of the City, and the faithful compliance with all the regulations made by the City Council relating to Spirituous and Intoxicating liquors. The bond shall be executed in the presence of the Clerk and filed in his office ; and any breach of its provisions shall work a forfeiture of the penalty thereof. The license issued by virtue hereof, may at any time, be revoked by the City Council, provided it shall be made to appear satisfactorily to the City Council, that the person or persons to whom such license shall have been issued, has violated, or failed to comply with any of the provisions of the Ordinances of the City or the rules and regulations of the City Council relating to spirituous and intoxicating liquors.

Sec. 2. Any druggist who shall be licensed in pursuance of the foregoing section, shall keep constantly on hand a suitable quantity of liquors, and of the best kind and quality that can be obtained, for the purposes specified in his license—he shall keep an accurate account of all his sales, specifying, in such account, the kind, quantity and price of the liquor sold by him, the date of each sale, the name of the purchaser, and the use for which the liquor on every such sale, was sold, as stated by the purchaser, which account shall be, at all times, open to the inspection of the City Council, or any member thereof ; and shall quarterly or oftener, if required, report said account or a copy thereof to the City Council, verified by his oath or affirmation, and that he has in all respects, according to the best of his understanding, faithfully observed the Ordinances and regulations of the City Council, relating to spirituous and intoxicating liquors—he shall not sell spirituous, intoxicating or mixed liquors, part of which is intoxicating, to any person when he has good reason to believe, or to suspect, that such person intends or will be likely to use the same for other than sacramental, medicinal, mechanical and artistic purposes ; nor shall he be authorized to sell or give away any such liquors to be drunk or used as medicine or otherwise, in his shop, store or place of business, and any such sale or giving away, or any other sale or giving away of any of said liquors not authorized by the provisions of this Ordinance, and prohibited by any other ordinance, shall subject such licensed druggist to the same penalties provided for the sale or giving away of such liquors in other cases, and in addition thereto, to a forfeiture of his license.

Sec. 3. If any person purchasing any spirituous, intoxicating or mixed liquors of such licensed druggist or druggists shall intentionally make to such druggist or druggists any false statement regarding the use to which such liquor is intended by the purchaser to be applied, such person so offending shall, upon conviction thereof, forfeit and pay a fine of twenty-five dollars, together with the costs of prosecution.

Sec. 4. Section number four (4) of an ordinance entitled "An Ordinance relating to Spirituous and Intoxicating Liquors" passed August 7th, A. D. 1855, also an ordinance relating to spirituous and intoxicating liquors, passed Sept. 5, 1854, are hereby repealed.

In testimony whereof I have hereunto set my name and affixed the seal of the City of Elgin the 31st day of August, A. D. 1855.

JOSEPH TEFFT,

Mayor.

R. W. PADÉLFORD, Clerk.

FURNISHING WAREHOUSE.

The above establishment is now open, with a choice selection of

NEW GOODS!!

Visitors to Chicago will find at the above establishment every article appertaining to the furnishing of a house with Carpets, Oil-Cloths, Blankets, Sheetings, Window-Shades, &c. &c. together with a complete stock of

CABINET FURNITURE.

well worthy the attention of persons about furnishing their houses. Chicago, April 17, 1855.

FOR SALE.

One House and Lot near the business portion of the city, well finished and painted. Good cellar, cistern &c. Cheap for cash.

A Good and Lot FOR SALE.

SITUATE near the centre of business. The main part of the house is one and a half stories high, 16x24, with a wing 14x20, all finished above and below, a good well, a large cistern with a chain pump, good out-houses, a good cellar. The location is one of the pleasantest in the city, near to business, yet retired. The lot is 4 by 8 rods, and the premises can be sold cheap, and on reasonable terms, if sold soon. N. B. The subscriber has several other houses, lots, of various prices and descriptions, and can sell low, if application is made soon.

EDMUND GIFFORD, Agen.

Planing Mill.

THE subscriber, having just procured Woodworth's PATENT PLANING MACHINE, respectfully announces to the public that he has opened a PLANING SHOP, at ELGIN, on the West side of the River, where he is prepared to furnish the following articles at short notice, and on reasonable terms—at \$1 per M, in advance of Chicago Prices.

Flooring, Planed and Matched ; Siding, Planed and Jointed ready to lay ; Lumber for finishing ; Fence Pickets, planed and Pointed. He also intends to keep a full assortment of LUMBER, SHINGLES, LATH, & TIMBER in short, everything in that line. He has also Circular saws in operation, whereby those building can save fifty per cent, by bringing their lumber to his shop.

WM. G. TODD.

Also, at their Lumber Yard near the Railroad Depot, on the East side of the River, all kinds of lumber, lath, shingles, timber, sash, doors, &c. by

TODD & WATKINS.

Elgin, August 11, 1853.

Cancers Cured.

WE STEPHEN DOMAN & AL PECK, having located ourselves in the Town of Plato, Kane County, Illinois, will personally attend to the cure of Cancers in all their various forms. For reference enquire of CLARINDA DOMAN, WILLIAM CARSON, Oshkosh, Wis., Mrs. WINTHROP, Hampshire, Kane Co. Ill., Miss MARY REED, New York.

2-21-y14

MEN'S custom made Kip and Thick Boots and Shoes for sale cheap for cash at

J. F. TAYLORS.

shall hold his office for one year unless sooner removed; he shall sell such liquor only in the one place designated in writing by the body appointing him, he shall in the purchase and sale of such liquor conform to such rules and regulations as the said body appointing him shall prescribe, not inconsistent with the provisions of this ordinance; he shall keep an accurate account of all his purchases and all his sales specifying in such account the kind quantity and price of the liquor bought by him the date when and the person of whom the purchase was made, the kind quantity and price of liquor sold by him, the date of each sale, the name of the purchaser and the use for which the liquor on every such sale was sold, as stated by the purchaser, and of all forfeited liquors by him received and sold, which account shall be at all times open to the inspection of the body appointing such agent, or any member thereof; and when required by said body or a majority of them he shall account with them regarding all his dealings as such agent, and exhibit to them all receipts, bills, books and papers of every kind relating to such dealings, or to his accounts; he shall sell such liquors at not less than twenty-five nor more than fifty per cent. advance upon the cost thereof, and shall when required by the body appointing him pay over the proceeds of his sales to the treasurer of the City; and he shall quarterly make a report verified by his Oath (or affirmation) of all his purchases and the cost thereof and of his sales and the proceeds thereof specifying the number of sales the respective quantities and kinds, sold for each of the purposes of Sacramental Medicinal Mechanical and artistic uses, and the quantity and kind and cost of all liquors on hand at the time of making such report.

He shall receive for his services such fixed and stipulated compensation as said body appointing such agent shall prescribe, but the amount of said compensation shall not be increased or decreased by reason of any increase or diminution of the sale of such liquor by such agent, and he shall not be in any way except as an inhabitant of said City interested in said liquor, or in the purchase or sale thereof, or in the profits thereon and no such agent shall be authorized to sell or give away, any spiritous or intoxicating liquors or any such liquors mixed with soda-water or any other compound liquid or otherwise to be drunk taken or used as medicine or otherwise in his shop store or place of business, or in any of the appurtenances or dependencies thereof, but any such sale or giving away shall subject the said agent to the same penalties provided for the sale or giving away of liquors contrary to the provisions of this ordinance. If any person purchasing any spiritous or intoxicating liquors of such agent shall intentionally make to such agent any false statements regarding the use to which liquor is intended by the purchaser to be applied, such person so offending shall upon conviction thereof, forfeit and pay a fine of twenty-five dollars together with costs of his prosecution to be recovered by an action of debt before the Police Magistrate of said City.

Every such agent shall receive from the body appointing him a certificate authorising him to sell at such place named in said certificate spiritous and intoxicating liquors for sacramental, medicinal, mechanical, and artistic purposes, only, which certificate shall be issued by the clerk of said city, attested by the corporate seal of the said city, said agent shall not receive any such certificate or exercise his office until he shall have executed to the City of Elgin, and delivered to the clerk of said city a bond with at least two good sureties to be approved by the said clerk in a sum of not less than five hundred dollars, conditioned that he will in all respects conform to the provisions of this ordinance in relation to his agency and the sale of spiritous and intoxicating liquors. If any such agent shall break the condition of such bond, such bond shall be forthwith put in suit, and his said certificate and appointment shall immediately become void; and moreover for any such violation shall be liable to the same penalties herein provided for the sale or

An Ordinance Relating to Spirituous and Intoxicating Liquors.

Be it ordained by the City Council of the City of Elgin:

Sec. 1. That the introduction, storing, depositing or keeping in store, in deposit, or on hand, or having in possession, within the corporate limits of said City, of any spirituous or intoxicating liquors, or mixed liquors part of which is intoxicating, for the purpose of selling, bartering, or exchanging the same, or for any species of traffic therein, except as herein after provided, is hereby declared to be a *Nuisance*.

And every person guilty thereof, and each and every person knowingly aiding or assisting therein, as agent, clerk, servant, or otherwise shall upon conviction, be fined in the sum of twenty-five dollars; and if the person or persons owning or having the charge or possession of said liquors, shall fail or neglect to remove the same without and beyond the corporate limits of said City, within twenty-four hours after their conviction, every such person shall be fined in the further sum of twenty-five dollars for every twenty-four hours, that said liquor shall remain within said corporate limits after their conviction, and ale, porter, lager beer and all wines are included among intoxicating liquors within the meaning of this Ordinance.

Sec. 2. Any person who shall sell barter or exchange directly, or indirectly, or give away or allow to be drank on his or her premises, any spirituous or intoxicating liquor or mixed liquor part of which is intoxicating, within the limits of said City, except as herein after provided, or who shall knowingly allow, suffer, or permit, the same to be sold, bartered, given away or exchanged except as hereinafter provided, by his or her agent, servant, or any other person, or persons, in or about any house, tavern, grocery, store, market, shop, mill, factory, saloon or other building possessed or occupied by him or her, either alone or with others, or any where in or about the premises thereto belonging within the said City, shall be considered and adjudged guilty of a nuisance, and every such person shall on conviction thereof be fined in the sum of twenty-five dollars, for each and every offence.

Sec. 3. When any person shall complain on oath before the Police Magistrate of "the City of Elgin," that he or she has good reason to believe, and does really believe that any spirituous or intoxicating liquors, or mixed liquors a part of which is intoxicating are stored or deposited or kept in store in deposit or on hand in any store, ware house, dwelling, room or building, or in any cellar or place within the corporate limits of said City, 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 allowing the same to be sold, bartered or exchanged in violation of this Ordinance. It shall be the duty of the said Police Magistrate to issue a warrant under his hand directed to the Marshal of said City or any Constable of the county of Kane, reciting the substance of said complaint, and commanding him forthwith to examine the place mentioned in said complaint, and seize and take away any and all kinds of liquors named in said complaint, and the vessels containing the same, that he shall find on said premises which he shall have good reason to believe are so kept as aforesaid, and remove the same to some safe place, and retain the same in his custody until further orders of the said Magistrate, which warrant the said Marshal or Constable shall execute and return with diligence and dispatch; with his indorsement thereon showing how he has executed the same.

And if upon such examination the said Officer shall find any of the said liquors so kept, or deposited as aforesaid, he shall make his returns accordingly stating the name or the names of the person, or persons owning the same, if known, and in whose possession, charge or care the same shall be, the kind and quantity of the liquors so found and where deposited, and thereupon the said Magistrate shall issue a summons or warrant as the case may be, as in case of a violation of the first section of this ordinance, summoning the person or persons owning said liquors or in whose possession, care or charge the same were found, to appear before the said Magistrate on a certain day, and hour therein named; to answer a complaint of the said City of Elgin for a violation of the first section of this ordinance, and upon judgment being rendered against any person or persons in such suit, for a violation of the first section of this ordinance, by keeping in deposit, in store or on hand as aforesaid, for the purposes as aforesaid, or allowing to be so kept the said liquors so seized by the said officer, the said Magistrate shall order the said officer having the charge of said liquor to remove the same without the limits of the said city, and deposit the same in some safe place subject to the order of the defendant in said suit, and shall notify him where the same are deposited, and in case judgment is rendered for the defendant on the trial of said suit, or the said suit is withdrawn or dismissed by the plaintiff, the said Magistrate shall order said Officer to return said liquors to said defendant.

Sec. 4. The City Council of the said City shall appoint some suitable person as agent of said City, for the purchase of spirituous and intoxicating liquors and for the sale thereof within the City, for Sacramental, Medicinal, Mechanical and artistic purposes, only; which agent may be removed and another appointed in his stead at the pleasure of the City Council.

No Inn Keeper or Keeper of a public eating-house, or of a house of public entertainment, shall be appointed such agent.

giving away of liquors contrary to the provisions of this ordinance.

Sec. 5. All suits to recover any of the fines or penalties imposed by this ordinance shall be commenced and prosecuted and all judgments recovered for the same, shall be enforced in the same manner as provided by ordinance in other cases. *Provided* it shall be the duty of the City Attorney, or of any other officer of the City, when any violation of any of the provisions of this ordinance, shall come to his knowledge, or on being informed of the same, and being furnished with reasonable proof of the fact, to institute and carry on prosecutions against any person or persons violating the provisions of this ordinance; and that no complaint shall be required in any prosecution or suit arising under this ordinance excepting where it is therein expressly provided; and in all cases of conviction judgment shall be given for the costs of the suit, in addition to the penalty as in other cases.

Sec. 6. The City Marshal is hereby authorized to call to his aid, in executing this ordinance or any process issued by virtue thereof, on all such male inhabitants of said city, over the age of eighteen years, as the nature of the case may require, and any person, who shall refuse and to obey such call, and any and every person who shall prevent or resist such officer, or who shall aid, or encourage or assist in preventing or resisting such officer in the execution of this ordinance or process aforesaid, shall, on conviction thereof, forfeit and pay to said city a fine not exceeding twenty-five dollars and costs.

Sec. 7. Nothing contained in this ordinance shall be construed to prohibit the sale, or keeping for sale, by the manufacturer thereof, of Alcohol and Highwines, if not adapted to use as a beverage, in quantities, not less than one gallon, or the sale of Beer in quantities not less than half a barrel by the manufacturer of the same, if manufactured in this city; and nothing in this ordinance shall be construed to forbid the sale, or keeping for sale, by the importer thereof, of foreign spirituous or intoxicating liquors, imported under the authority of the laws of the United States regarding the importation of such liquors, and in accordance with said laws: *Provided*, that the said liquor at the time of sale, or keeping for sale by said importer, remains in the original casks or packages in which it was by him imported, and in quantities in which the laws of the United States require such liquor to be imported, and is sold by him in said casks or packages, and in said quantities only: Nor shall any thing herein contained be so construed as to prohibit the sale, or keeping for sale, of burning fluids of any kind, perfumery, essences, chemicals, dyes, paints, varnishes, cosmetics, solutions of medicinal drugs, medical compounds, or any other article which may be composed in part of alcoholic or other spirituous liquor if not adapted to use as a beverage: *Provided*, however, that if such article is capable of being used, or is intended to be used, as a beverage, or in evasion of this ordinance, the sale, or keeping for sale, thereof, shall be deemed a violation of this ordinance and punished accordingly.

Sec. 8. This ordinance shall take effect on and after the first day of September next.

Passed, August 7th A. D. 1855.



In testimony whereof I have herewith set my name and affixed the seal of the City of Elgin, the 7th day of August, A. D. 1855.

JOSEPH TEFFT, Mayor,
R. W. PADEFORD, Clerk.



AYER'S PILLS.

FOR ALL THE PURPOSES OF A

FAMILY PHYSIC.

There has long existed a public demand for an effective purgative pill which could be relied on as sure and perfectly safe in its operation. This has been prepared to meet that demand, and an extensive trial of its virtues has conclusively shown with what success it accomplishes the purpose designed. It is easy to make a physical pill, but not easy to make the best of all pills—one which should have none of the objections, but all the advantages, of every other. This has been attempted here, and with what success we would respectfully submit to the public decision. It has been unfortunate for the patient hitherto that almost every purgative medicine is acrimonious and irritating to the bowels. This is not. Many of them produce so much gripping pain and revulsion in the system as to more than counterbalance the good to be derived from them. These pills produce no irritation or pain, unless it arise from a previously existing obstruction or derangement in the bowels. Being purely vegetable, no harm can arise from their use in any quantity; but it is better that any medicine should be taken judiciously. Minute directions for their use in the several diseases to which they are applicable, are given on the box. Among the complaints which have been speedily cured by them, we may mention Liver Complaint, in its various forms of Jaundice, Indigestion, Languor and Loss of Appetite, Listlessness, Irritability, Bilious Headache, Bilious Fever, Fever and Ague, Pain in the Side and Loins; for, in truth, all these are but the consequence of diseased action in the liver. As an aperient they afford prompt and sure relief in Constiveness, Piles, Colic, Dysentery, Humors, Scrofula and Scirrh, Colds with soreness of the body, Ulcers and impurity of the blood; in short, any and every case where a purgative is required.

They have also produced some singularly successful cures in Rheumatism, Gout, Dropsy, Gravel, Erysipelas, Palpitation of the Heart, Pains in the Back, Stomach, and Side. They should be freely taken in the spring of the year, to purify the blood and prepare the system for the change of seasons. An occasional dose stimulates the stomach and bowels into healthy action, and restores the appetite and vigor. They purify the blood, and by their stimulant action on the circulatory system, renovate the strength of the body, and restore the wasted or diseased energies of the whole organism. Hence an occasional dose is advantageous, even though no serious derangement exists; but unnecessary dosing should never be carried too far, as every purgative medicine reduces the strength, when taken to excess. The thousand cases in which a physic is required cannot be enumerated here, but they suggest themselves to the reason of every body; and it is confidently believed this pill will answer a better purpose than any thing which has hitherto been available to mankind. When their virtues are once known, the public will no longer doubt what remedy to employ when in need of a cathartic medicine. Being sugar-wrapped they are pleasant to take, and being purely vegetable, no harm can arise from their use in any quantity. For minute directions see wrapper on the Box.

PREPARED BY

JAMES C. AYER,

Practical and Analytical Chemist,
LOWELL, MASS.

SKY LIGHT Daguerrean Gallery!!

THE SUBSCRIBER would inform his friends and the public generally, that he has constantly on hand, direct from the manufacturer, a complete assortment of goods in his line, among which, may be found, almost every variety of Cases, from the cheapest to the most expensive; fine Gold Lockets of all sizes, Plated Lockets, Daguerreotype Bosom Pins, splendid Gift and Rosewood Frames for families or single likenesses, &c. &c.

Great care has been taken in fitting up his rooms, and no expense spared to insure the very best results—finally from seven years constant attention to the Daguerrean business, and his facilities for obtaining every valuable improvement, he feels somewhat confident in assuring his patrons, that their work shall be done in the very best style of the art. As many transient and inexperienced persons are engaged in picture making, whose unfinished work will soon fade, and leave the possessor without the desired image, when perhaps it is too late to obtain any other—I would say for the information of those unacquainted with me, that Elgin is my permanent residence, and all pictures taken by me, are warranted to retain their original beauty. Portrait of Adults taken in any weather; for children a clear dry, between Ten and Two, is preferable. Permit me to suggest, that you improve the first opportunity to secure a life-like likeness while in health. Whether visitors wish pictures taken or not, we shall at all times be happy to see them. Particular attention given to instructing pupils in the art.

R. W. PADEFORD,

COMMERCIAL BUILDINGS,

ELGIN, ILL.

N. B. I have just received one of C. C. Harrison's enlarged newly-invented instruments, which are undoubtedly superior to any in the world.

It will be remembered, that to C. C. Harrison, was awarded the first premium on cameras, at the World's Fair, in London, two years ago, and the instrument above mentioned, is a great improvement upon those he then manufactured.

1-41ly

R. W. P.

Ames' Shovels &c

30 DOZEN of Ames' No. 2 Shovels, plain and back-strapped, Simmons' Pickaxes, Grub Hoes and Mattocks, for sale at a low tariff, by J. B. SMITH & CO.
Elgin, Nov. 2nd, 1854.

DRY GOODS, FOREIGN & DOMESTIC
Fancy and Staple
CLOTHING & MACAULEY,
DEALERS IN
NUMBER ONE, UNION HALL.

Notice.

All persons indebted to CALVERT & MACAULEY in acct. or otherwise the past year, will please call in this Month and settle as we wish to balance our books for the commencement of a New Year.
CALVERT & MACAULEY,
Elgin, Nov. 30, 1854.

JOHN WEST,
197 Lake Street, 197
CARPET

indictment - and

2nd. That this Court has no jurisdiction to try by Indictment the defendant for selling liquor without a license within the limits of the City of Elgin -

It was thereupon agreed by and between The People ^{by the City of Elgin} and the States Attorney of ^{Elgin} E. S. Joslyn and the defendant by his Attorney S. Wilcox - that the questions involved in the foregoing reasons assigned for quashing said Indictment should be considered as legally & properly presented and pending for the Court to decide - that a City government was duly organized under the said acts of the Legislature of this State - 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 face within the City limits upon the subject of liquor which is as follows -

and that all the technical objections to the manner of presenting the questions involved in said motion should be taken and deemed as waived -

That thereupon afterwards to wit: at said September Term the motion to quash was argued by J. Wilcox Attorney for said defendant and E. S. Joslyn for the People - And the Court then took the case under advisement until the next Term thereof - That afterwards to wit at the December Term AD 1857 of said Court the Court overruled said motion to quash said Indictment and sustained the Indictment. To which decision of the Court overruling said motion and sustaining said Indictment the defendant by his Council then and there Excepted -

And the said defendant having been called upon pleaded Not Guilty to the Charges in the Indictment and afterwards to wit on the 23^d of December AD 1857, the said Cause comes on for trial in said Court, and after empanneling a jury under the direction of the Court the People introduced the following witness to wit Charles W. Bennett who being sworn testified as follows to wit:

I may have bought liquor at the Waverley 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 & drank it there several times - don't know how many times - got liquor on 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 defence also rested and the above is all the evidence given in the case - The Defendant then asked the following Instructions of which the one marked given, the Court gave, and the one marked refused, the Court refused to give to the jury to wit

1st
That it is the duty of the prosecution to prove that an offense as charged in the Indictment was committed and the evidence must be such as to leave no reasonable doubt of the Commission of the offense by the defendant before you can find defendant guilty, -

2

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~~

Given

Refused

but that the liquor was paid for, or charged to some one -

To the refusal to give the instruction marked refused the defendant by his Council then and there excepted -

The law as above having been given to the jury They then retired to consider of their verdict, and afterwards returned into Court with the following verdict to wit:

We the Jury find the defendant Guilty in the second, third and fourth counts of the Indictment -
Horace Benham Foreman

That thereupon the defendant by his Attorney moved the Court to grant a New trial - for the following reasons to wit: -

That the evidence was insufficient to sustain the verdict -

That there was not sufficient evidence to warrant the verdict -

That the Court erred in refusing to give the instruction asked by the defendant -

Which motion after argument of Council the Court overruled and caused judgment to be entered against the defendant -

To which ruling of the Court refusing to grant a new trial the defendant by his Council then & there excepted -

And afterwards to wit on the 24th day of December the defendant by his

Attorney moved the Court to arrest the said judgment for the reasons heretofore assigned for cause to quash said Indictment - which motion after argument of Council the Court overruled - to which decision of the Court overruling said motion to arrest the judgment in this case the defendant by his Attorney then and there excepted -

And the defendant thereupon prayed his appeal in this case, which was allowed by the Court on Condition the defendant perfect his appeal by giving his bond with Security to be approved by the Clerk in the sum of \$300. within Thirty days from this date 25th inst.

C. H. Morgan (Seal)
Judge of said Court

And afterwards to wit: on the 6th day of January, A.D. 1858, a Bond was filed in the office of the Clerk of said Court which was in the words and figures following to wit:

Know all men by these presents that we William C. Kimball and Samuel J. Kimball of Kane County, State of Illinois are held and firmly bound unto the People of the State of Illinois in the sum of three hundred dollars to be paid unto the People of the State of Illinois to the payment of which well and truly to be made we bind ourselves our heirs Executors, Administrators and assigns jointly and and severally & firmly by these presents.

Sealed with seals and dated this 30th day of December A.D. 1857.

The Condition of the above obligation is such that whereas the People of the State of Illinois did on the 24th day of December A.D. 1857, recover in the Court of Common Pleas of the City of Elgin in Kane County, State of Illinois a judgment against William C. Kimball for the sum of thirty dollars together with their costs and charges from which judgment the said William C. Kimball immediately prayed an appeal to the Supreme Court, which was allowed by the Judge of said Court of Common Pleas on condition the said William C. Kimball and said

Page 19

Samuel J. Kimball as his surety filed their bond on the penal sum of three hundred dollars within thirty days from the last day of the Term of said Court conditioned as the law directs

Now therefore if the said William C. Kimball shall pay the said Judgment Costs interest and damages in case the said Judgment shall be affirmed and shall prosecute his said appeal with due diligence then this obligation to be void otherwise to remain in full force.

Wm C. Kimball (Seal)

S. J. Kimball (Seal)

Upon the back of which bond is the following
Indorsement to wit: Approved January 6
1858. R. W. Padelord Clerk

State of Illinois }
Kane County }
City of Elgin }

I Rodolphus W Padelford
Clerk of the Court of Common
Pleas of the City of Elgin, in the County of Kane
and State of Illinois do hereby certify that
the above and foregoing is a true and complete
Copy of all papers on file ^{in my office} and all the proceedings
had and entered of record in our said Court
(except an Affidavit for continuance which by agreement
of parties is omitted) in the foregoing entitled cause
Witness my hand and the Seal
of the said Court this 20th
day of April AD 1858.

R. W. Padelford
Clerk

State of Illinois }
Supreme Court } of the April Term AD 1858
William C Kimball - appellant }

as
The People &c - appellee }
Afterwards to wit on
the 21st day of April in said ~~term~~ Term before said
Court ^{comes} the said William C Kimball - appellant by S. Wilcox
his attorney & says that in the Record & proceedings aforesaid
there is manifest error in this to wit -
1st - That the said Court of Common Pleas of the City of Elgin erred

in overruling the motion of the appellant to quash the indictment in the case -

2^d That the said Court erred in deciding that the general law of the State authorizing licenses to be granted & inflicting penalty for selling liquor without license was in force in the said city and erred in not quashing & dismissing said indictment -

3^d That the said Court erred in refusing to give the instructions asked by the appellant on the trial of said case -

4th That the said Court erred in refusing to grant a new trial to the appellant -

5th That the said Court erred in entering judgment on the verdict against the appellant when by law the evidence was insufficient to sustain the verdict -

6th That the said Court erred in overruling the appellants motion to arrest the said judgment -

7th That by the record & proceedings aforesaid it appears that judgment was given ^{against} ~~aforesaid~~ the appellant when by law no judgment ought to have been rendered against him -

And the said appellant prays that the judgment aforesaid for the errors in the record & proceedings aforesaid may be reversed annulled & for naught held and that the said appellant may be restored to all things which he has lost by occasion of said errors and of the judgment aforesaid -

S. Milcox
att'y for appellant

The People &c
~~as~~ ~~10~~
William B Kimball

Record -

William B Kimball
vs
The People &c

Record -

Filed April 21, 1888
L. Leland
Clk.

W. B. Kimball

WILLIAM C. KIMBALL, Appellant,
 VS.
 THE PEOPLE, &c.

S. WILCOX, Attorney for Appellant.
 " " " " People.

POINTS OF APPELLANT.

The indictment can only be sustained on the ground that the Act of February 12th, 1853, (Sess. Laws, 1853, p 91) reviving the laws in force before February 1st, 1851, in relation to granting licenses to persons to sell liquor, and fixing amount at one gallon instead of one quart, was not repealed by the Act of February 28th, 1854, incorporating the City of Elgin, (S. L. 1854, 2d S p 88) as to the City of Elgin, but was in force therein.

The Act of February 12th, 1853, as to the City of Elgin, was repealed by the passage of the Act of February 28th, 1854, incorporating said city.

1st. It was repealed by express declaration.

Sec. 18 p 99 2d S. L. 1854 says, "All acts or parts of acts coming within the provisions of this charter, or contrary to or inconsistent with its provisions are hereby repealed."

By the provisions of the charter (Sec. 18, p 92 and sec. 4 of the amendatory act of Feb. 15th, 1855, P. L. 1855, p 186) the city council have the right to license, tax, &c., retailers, grocers, &c., and to license the sale of liquors, &c., and sec. 22 grants the city authority to tax, restrain, prohibit, &c., tippling houses, dram shops, &c. Sec. 42 2d S. L. 1854 p 93 and sec. 6 of said amendatory act grants the right to the city to impose fines and penalties for the breach of any city ordinance, and to provide for the recovery and appropriation of the fines.

These provisions were intended to and really do place the disposition and regulation of the liquor question entirely under the control of the city council. The council so understanding passed the ordinances attached to the record in this case, and granted licences under said ordinances.

The acts above referred to (Feb. 12, 1853, reviving old law) authorizing the County Commissioner's Court or Board of Supervisors to grant licenses to keep a grocery, which is defined a place where spiritous liquors are retailed, and inflicting a penalty of \$10 for selling liquor without a license, and providing the mode of recovering the penalty, and directing it to be paid into the county treasury, not only "come within the provisions" of the charter of the city of Elgin, but are contrary to and inconsistent with the same.

The power to grant license to sell liquor, to inflict a penalty for selling it without a license, to direct the use the fine shall be applied to, is expressly conferred on the city council by the charter; the city in pursuance thereof have exercised the power—enacted an ordinance imposing a penalty of \$25 for selling or having in charge for the purpose of selling liquor within the city limits, and directed the money collected for breach of the ordinance to be paid into the city treasury; all composing a system of laws or ordinances designed to suppress the evils of intemperance within the city. The State laws above referred to have the same object in view; its provisions relate to the same subject matter, and are therefore expressly repealed.

2d. It is repealed by implication.

If two statutes are repugnant to each other the one last enacted operates as a repeal of a former one. 14 Ills. 334. 3. *Seam 1* —

The system of ordinances or laws upon the subject of liquor in force in Elgin under the act incorporating the city, and the ordinances of the council in pursuance thereof, is in its policy, penalties, and application of its penalties, repugnant to and inconsistent with the system of the general laws of the State upon the subject.

The City system seeks to suppress entirely the use of liquor except for a few specified purposes.

The State system only attempts to regulate its use.

The City system imposes a penalty for having liquor in any quantity in possession with the view of selling.

The State system imposes no penalty under such circumstances.

The 1st imposes a penalty of \$25 for selling.

The 2d imposes a penalty of \$10 only.

The 1st gives the penalty to the city.

The 2d gives the penalty to the county.

There is also a wide difference in the manner of recovering the penalty.

It is held that the laws authorizing the granting of licenses to sell liquor, and the laws providing penalties for selling without license compose one system, are dependent upon each other, and that the repeal of the one would operate as the repeal of the other.

Sullivan vs. The People, 15 Ills. 233.

Zarresseller vs. The People, 17 Ills. 101.

Suppose the Appellant had obtained a license under the general law from the Board of Supervisors of the county to sell liquor in the city of Elgin, and a suit was instituted against him by the city for a breach of the city ordinances for selling liquor within the city, or having it in possession with a view to sale, could he plead the license successfully? He could if the general law of the State was in force in the city, but if it was repealed he could not. Now to hold that he could, and that the license would bar a recovery, would destroy all control of the city council over the question of liquor, and render the language used in S. 18 and 4 and S. 42 and 6 of the city charter and that used in said ordinances meaningless, idle words, and thus would be thwarted the principal object expected to be gained by a city organization. And yet if he is not protected by it his license avails him nothing—is a cheat.

On the other hand would a license from the city of Elgin protect the Appellant from a prosecution under the State law, and a fine of \$10 for selling liquor? It ought certainly.

Again if neither authority granted licenses the prosecution to recover the penalty imposed under the one system for selling liquor without license would be no bar to another prosecution to recover the penalty for the same offence imposed by the other system. A person would then be twice punished for the same offence, which is not tolerated by the law and is unjust.

The granting of the authority to *license* to the city, in connection with the action of the city council in reference thereto necessarily by implication repealed the act granting authority to license to the County Commissioners' Court, or as in this case to the Board of Supervisors; and the effect of this according to the cases in 15 and 17 Ills. was to repeal the State law imposing a penalty for selling liquor without license.

The inconsistencies, absurdities and oppressions that result from holding the State law on the subject of liquor in force in the city of Elgin, are of themselves, were there no repealing clause in the city charter, sufficient to make it the duty of the courts to hold that the State law therein is inoperative—repealed by implication.

The instruction which was refused by the court ought to have been given, because liquor can lawfully be given away—the selling for gain is the offense—and it was proper to leave the question whether it was given away or sold, under the evidence, to the jury to decide. This the instruction proposed to do.

Again the evidence fails entirely to show that the liquor got was obtained in less quantity than one gallon. All that the witness says may be true, and yet the Appellant be guilty of no offence.

No presumptions are to be indulged in favor of the prosecution—it is held to strict proof, and the proof shows no offence.

A new trial should have been granted if the indictment is well found.

S. WILCOX, Attorney for Appellant.

William C. Kimball

vs

The People &c

Points of Appellunt

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Filed May 7, 1888
J. C. Kimball
Clerk

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Notwithstanding the People, 13 Ill. 101.

Sullivan vs The People, 13 Ill. 332.

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State of Illinois } Supreme Court 3rd
Grand Division
April Term Ad 1858

William C Kimball }
as } Appeal
The People vs

And now
comes the said People by
their Attorney, and says
that there is no error
nor manner of error in
the record and proceedings
herein. Wherefore the said People
pray that said judgment
may be affirmed and that
they recover their costs in
this behalf. W. Bushnell
State Atty

Supreme Court
— 10 —

Kimball

vs.

The People of

Florida in Error

Filed May 7, 1858
L. Leland
clerk

Bushnell
for People