

12774

No. _____

Supreme Court of Illinois

City of Pekin

vs.

Sch
melzel

1
Plas to a term of the Circuit Court
began and held at the Court house
in the City of Pekin ^{within} the County of
Tazewell & State of Illinois on the
Second Monday of the month of October
in the year of Our Lord one thousand
Eight hundred & fifty eight Present
Honorable James Harriott Judge
of the 1st Judicial Circuit of the
State of Illinois

Be it remembered that on the
twenty eighth day of July AD 1858
a ~~copy of the~~ ~~and passing~~ ~~return~~
~~an official~~ ~~fact~~ were filed in the
Office of the Clerk of the Circuit
Court of said County in the words
and figures following to wit:

City of Pekin

vs

Jacob Schmeltzel

Before Chas Turner

Police Magistrate of the

City of Pekin

1858 July 7. Charge of Selling Beer & Malt Liquor
July 5th to John B Orr & Wm B Parker
Complaint by S. C. Crapson
" " Capias issued & delivered to Orr
City Marshal

1858 July 7th Caplan returned with the body
of the defendant who plead not
guilty and on hearing the evidence
he was found guilty and fined
fifteen Dollars and costs of
suit for which judgement was
rendered against him

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" " " Defendant prayed an appeal
to Circuit Court

" " 27 Defendant filed appeal bond
with John Zuckwiler as security
- Bond approved

Police Magistrate cost 3.05

City attorney do 1.50

City Marshall do $\frac{50}{\$5.05}$

State of Illinois
Tazewell County J. D. Charles Turner
Police Magistrate of the
City of Pekin do hereby certify that the
foregoing Transcript and accompanying
papers contain a full ~~and~~ true and
complete Statement of all the proceedings
had before me in the above entitled
Cause

Given under my hand this 28th
day of July A.D. 1858
Charles Turner Police Magistrate

Know all men by these presents that we
Jacob Schmeltzel and Zuckwiler are
held and bound unto the City of Pekin
in the Sum of forty Dollars for the payment
of which well and truly to be made we
bind ourselves our heirs Executors ad-
ministrators and assigns justly Severally
and firmly by these presents Witness our
hands and Seals this July 27. 1858

The condition of this obligation is
such that whereas the above named
City of Pekin did on the 7th day of July
inst before Charles Turner Esq. Police
Magistrate of the City of Pekin recover
a judgment against the above bounden
Jacob Schmeltzel for the sum of fifteen
Dollars fine also for costs of suit from
which judgment the said Jacob
Schmeltzel has prayed an appeal to
the Circuit Court of Logansport County
Illinois now if the said Jacob
Schmeltzel shall prosecute his said
appeal with effect and shall pay
whichever judgment may be rendered by
the Court on the dismissal or trial of
said appeal then this obligation to be
void otherwise to remain in full
force and effect

Appealed by me at my office
this 27th day of July 1858
Charles Turner P. M.

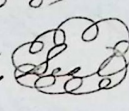
Jacob Schmigel
John Zuckwiller

State of Illinois
Tazewell County } The People of the State
City of Pekin } of Illinois to the City
Marshall of the City of Pekin
or any constable of said County greeting
Whereas complaint has been
made to before the undersigned Police
Magistrate of the City of Pekin that one
Jacob Schmigel was guilty of a breach
of an ordinance of said City entitled
an ordinance for Licensing the vending
by retail of Spintous and malt liquors
by selling beer and Malt liquors to
John B Orr & William B Parker on the
3rd day of July 1858

There are therefore to command
you to arrest and take the body of the
said Jacob Schmigel and bring him
forthwith before me at my office in
Pekin to answer said complaint and
be further dealt with according to law

and the ordinances of said City—

Given under my hand and seal
this 7th day of July AD 1858

Charles Turner P.M. 

And now afterward to wit on the
Second day of August AD one thousand
eight hundred & fifty eight a summons
was issued in said cause in the words
and figures following to wit:

State of Illinois }
Tazewell County } ss The People of the State
of Illinois to the Sheriff of said County
Greeting:

We command you that you summon
City of Pekin if he shall be found
in your County personally to be and
appear before the Circuit Court of said
County on the first day of the next Term
thereof to be held at the Court House in
Pekin in said County on the Second
Monday of October next to prosecute his
suit against Jacob Smelzel lately
appealed from before Charles Turner J.

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



Witness Merrill & Young Clerk of
our said Circuit Court and the Seal
thereof at the City of Pekin this 2^d day
of August AD 1858

Me C Young Clerk Circuit Court,

Which said Summons was after-
wards to wit on the 18th day of September
AD 1858 with the following endorsement
to wit:

Served by reading to William B
Parker Sept 18th 1858

C Williamson S. J. C

And now afterward to wit:
at a term of the Circuit Court begun
and held at the court house in Pekin
within and for the County of Tazewell
and State of Illinois on the first
Monday of February in the year of our
Lord one thousand and Eight hundred
and fifty nine Present the Hon
James Harriott Judge of the 21st
Judicial District Circuit Hugh
Fullerton Prosecuting attorney Thomas
C Reeves Sheriff M. C. Young Clerk
Jh

The following proceedings were
had in said Court to wit:

February the 8th AD 1859

City of Pekin *vs* Appell
vs
Jacob Smelzel *vs* Appell

And now on the 8th day
of February AD 1858 came the
parties by their attorneys whereupon
came a jury of twelve good and
lawful men to wit

William Holmes
George C. Heriman
George W. Bennett
George Chase
J. Gordon Bailey
William Seibert
Theron Lyman
Isaac Brown
Samuel Puterbaugh
Edward McGillivray
Willis Crabb
Lucius Case

Duly Elect a trier and Sworn
who having heard the proofs ^{allegations} & arguments
of the parties and arguments of
Counsel thereon for verdict say

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The the Jury find ~~for~~ the defendants
^{not guilty}
It is therefore ordered and adjudged
by the Court that the defendant
recover of said plaintiff the costs
and charges by him about his defence
expended and that Execution issue
therefor

x
State of Illinois } In Circuit Court
Tazewell County } Feb Term 1859

City of Pekin }
vs }
Jacob Smelzel }

Be it remembered
that upon the trial of this cause, the plain-
tiff offered in evidence the following ordinan-
ce, to wit: ("An Ordinance")

Entitled an ordinance for
Licensing the vending, by retail,
of Spirituous and Malt Liquors:

Section 1. Be it ordained by the City
Council of the City of Pekin that
from and after the passage of this ordi-
nance, the City Council may grant
licenses to any person or persons
to retail vinious, Spirituous and

Malt Liquors in said City, in less quantities than one gallon, on the following conditions to wit:

The Applicant or applicants shall set forth in writing the building, room or place intended to be occupied by him or them, and pay to the Treasurer of the City of Pekin for the ~~license~~ granted the sum of One hundred Dollars, and shall execute a bond to the City of Pekin, with one or more securities to be approved by the City Council, conditioned that the applicant or applicants will keep an orderly house; that he or they will not permit any unlawful gaming or riotous conduct therein; that he or they will not keep open or permit his or their grocery to be kept open, or sell therein any Spiritous Vinous or Malt Liquors, on a Sabbath day, or after eleven o'clock at night; and that he or they will observe all laws and ordinances now in force, or that may hereafter be in force, regulating the Sale of Vinous, Spiritous and Malt Liquors.

10 §2. Licenses granted to keep groceries or
sell beer shall not authorize the person
or persons obtaining the license to vend
or sell Winos, Spiritous, or Malt Liquors
in more than one place or house, and every
license shall describe the house and
place intended to be occupied and each
license shall also contain a condition
that any violation of this ordinance by
the person or persons to whom the
License is granted shall cause an imme-
diate forfeiture of all rights and
privileges granted by said license,
which shall, from and after a conviction
of the party or parties for a violation
of this ordinance, be absolutely void,
and all the parties therein named shall
thereafter be alike liable as though
no license had been ^{ever} granted

§3 Every person or company of persons
not having a legal license to keep a
grocery or sell beer, who shall barter,
sell, or exchange or otherwise dispose
of for his or their gain or benefit any
winos, Spiritous, Mixed or Malt Liquors
in less quantity than one gallon, within
said City, to any person or persons what-
ever, or shall permit the same to be done

11 on his or their premises or elsewhere,
for his gain or their gain or benefit,
shall forfeit and pay to said City not
less than ten and not exceeding twenty
five dollars for each offence, together
with the costs of suit;

§ 4. From and after the passage of
this ordinance no person or persons shall
keep a common ill-governed and
disorderly house, or permit unlawful
gaming or riotous or disorderly conduct
therein; or keep open his or their grocery
or beer house, or permit the same to be
kept open, or spiritous or malt liquors
to be sold there or given away, on the
Sabbath day, or after Eleven O'clock
in the evening of any day of the week;
or shall ^{sell or} give any vinous or spiritous or
Malt Liquors (in the absence of their
parents or guardians) to any person
or persons under 18 years of age,
or permit any person or persons under
18 years of age to loiter about or frequent
his or their grocery or beer house; and any
person or persons who shall violate any of
the provisions of this ordinance shall
forfeit and pay said City the sum
of not more than ten or more than

twenty dollars and cost of Suit.

12 § 5 All licenses granted under this Ordinance shall be signed by the Mayor, countersigned by the Clerk, and have the Seal of the City affixed thereto, and shall be for the term of one year only, and at a specific place, and not be assignable; and in all cases of application for license to keep grocery or sell beer by less quantity than one gallon, the City Council may grant or reject the same in their discretion.

§ 6 all forfeitures and penalties incurred under this ordinance may be prosecuted for and recovered by action of debt, or otherwise, before the Police Magistrate of the City of Peking; No information under oath as in other cases, provided the officers of the City shall in no case be required to file information except on their personal knowledge, and any person knowing of or having good reason to believe there has been a violation of any ordinance of the City by any person whomsoever, shall give immediate information thereof to the Police Magistrate.

in due form.

§ 7 That nothing in this ordinance shall be construed as to prevent Druggists from Selling Spirituous or vinous liquors, in good faith for medicinal purposes, in less quantity than one gallon

§ 8 All ordinances and parts of ordinances coming in conflict with this ordinance shall be and the same are hereby repealed; and from and after the passage of this ordinance it shall not be unlawful to keep in store sell or give away any vinous, spirituous or malt liquors in greater quantities than one gallon, for any purpose, by any person, or at any place in the City of Pekin belonging to or in possession of the person so keeping or trafficking in said spirituous liquors — And provided further, that nothing herein contained shall in any way effect any action, prosecution, suit or proceeding by virtue of any ordinance in said City against any person whatever.

Passed 25th April, 1856

L. H. Wilkey, Mayor
Wm B Parker, City Clerk

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and proved that same had been
 duly published in a newspaper
 published in said City as required
 by the Charter; and also proved
 that the same was signed by persons
 who were then Mayor and Clerk of
 said City; and that the Seal thereto
 attached was the Seal of said City;
 to the reading of which ordinance
 in evidence the defendant objected,
 for the reason that it was inconsistent
 with the laws of this State, and that
 the City Council had no authority
 to pass the same; which objections
 were sustained by the Court, and the
 ordinance excluded from the jury; to
 which the plaintiff at the time excep-
 ted, and now prays this bill of Exception
 may be signed and sealed, which is
 accordingly done.

James Harriott 

State of Illinois
Logan County

I Merrill L. Young Clerk
of the Circuit Court within and
for said County, do hereby certify
the foregoing to be a true
and authenticated copy of the
Papers and Proceedings of the
cause therein named a fully
the same remain of record as
file in my office

Witness Merrill L. Young
Clerk and the seal of
said Circuit Court here
affixed at Pekin this 5th
day of March 1855
Merrill L. Young
Clerk

State of Illinois }
Supreme Court } ss

And now comes
the plaintiff in error by James Roberts
and says that in the record and
proceedings there is manifest error

in this to wit:

1st The Court erred in refusing to allow the Ordinance offered by the City of Pekin to be read in evidence to the jury upon the trial of said Cause, and in excluding the same from the jury.

2^d. The Court erred in each and every decision given in the case, and ~~and~~ for said errors prays said judgment to be reversed.

James Roberts

And the said defendant in Error says that neither in the record & proceedings aforesaid nor in the giving of judgment aforesaid is there any error therefore he prays that said judgment may in all things be affirmed &c

A L Davison for
Def't in Error

Record
Filed Apr. 20. 1859.
L. Seland
Clerk

W. S. J. Clerk

State of Illinois } In Circuit & General
Supreme Court } Division April Term 1859

City of Pekin }
" } Error to Jewell
Jacob Smutzel }

We agree that this cause may be
brought at the present Term of the Supr-
eme Court, and we both hereby
waive the issuing a writ of Error
and the issuing and service of
a *Scire facias* to hear error

James Roberts
att'y for the City of Pekin
A. L. Harrison for
Appellee

City of Peoria
vs.
Jacob Smigel

Agreement

Filed April 26, 1889
L. Leland
clerk