12322 No.____

Supreme Court of Illinois

Pres.& Directors of the Town of St.Charles

VS.

O'Mailey

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the Bundento hustus of the Town of St. Charles Peter O Mailey 80 1857

(Muted States of Universed h Hatt of Illrivis / Come County Pleas before the Houardell Is ace I Milson Judge of the 18th Indices Circuit in The State of Illurois and pusiding Judy of the Haw beauty liverent bount at a Lern of soid Court begow thelds at the Court Heause in Geneva in soul bounty on the 12th day of May AD. 1866, Besent The How Isaac & Wilson Judge Lowence & Borker Theriff Attat & Dearbour Clerks Be it remembered that the following houserift was filed in the Home bounty leirent Court on the 23d day of Loursey & & 1836 which is in the words and figures following How of Illinois I The People of the state of this Son on hereby commonded to summon Veter Moily To oppear before mie at my office in Hehveles on the 12th day of December 1856, at goeloch and, to answer the comploint of the President and Bustus of the loon of Hohoules in on action of detet for the westotion of the second section of an ordinance possed by said Beautent and mustus dem 18th

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1854 protesting the sale of spirituous remans fermented mixed and intoxicating lymous in said town for a faciline to pay them fenalties a certain demand not seeding are hundred dollars and thereof make due return as the love devets, Eview under my hours and seal this 5th day of December AD. 1835, A Roll Hogue 3,0, was - on the book of which surrous on the following words of figures to let Metured serveds by reading to the within womed defendant see 7. 1835 Henry Mb Color constitute, cost, 86 How of Illuris of The people of the state of Illuris Have County so Ito John Hund, Jenes Hoadged Newson Courly, P. J. Compstock I. B. Celyde, you on hereby commonded to oppear before me at my office in Etlehueles on the 12th day of one 1805, at 9 aclock Alle, to testify and the buth to speak in a motter in suit wherein the Besident cerde mustres of the town of It, behales on Resintiffs and Peter Estivily is defended and this gon on not to out under the fewalty of the leave, swew under my hours and seal this 10th day of occided, 1855 Alb. M. Mayne Es Tustice of the Rever (Endocreed as follows) Returned served by reading to the following nouned witnesses, John D. Clych N.P. Polmer dese 12th 1855, Jenes Hodges, Rousom Corroly P. I. Compestick see 11th 1805, art \$1.00 Henry block constitutes

The President and Frustus of the lown of Ho. Charles a action debt for the visitation Peter Moily 3 by said President and Frustus of the town of It Charles June Luctices des- 15th, 1864 probability the sale of viveus fermented Sockety ent 121/2 mixeds and intopicating Lyines in said town -Summer 10 3/4 December 5th 1855, summons issued returnable Ent July 20 Dre, 12th ut 9 aclock Also, delivered to Henry sulfenus or 18 18 18 Celeerts course, De y to 1855 surremons returne 4 ouths 25 serveds by reading to the defendant by Henry ind museups. Me believe boust o fees , 30 ets, see 10. 1855; subfermed set that \$1.00 essued at petits request, delinered to Kenry M blook \$2,00 Court, Dec 12, 1865 subperior returned o served Court for by meding to dohn & Colyde or Polines Juns sing my Houses Rousour County . R.V. Compatrets by Henry Mb but so belock bout, fees, 1.00, oce 12, 1885 Parties offered n "Sub. 1,00 winds course trick, and Jenus He volges, John & Withespoke to leggle Nouson County . P. I. Comfetick seven as witnesses on front of the religio, dependent introduced notestimores, and other hearing the cause and considering the testimony it was considered by the Court that the said defendant is guilty of the western comploined of and a quelquet is rendered in four of Mountiffs against difen dout for the sum of one his dred dollars detit cloude bers - ---[12322-2]

State of Illinois of I A Re Mother on a Sustre Moune County as I of the Pever in and for The said County do hereby certify that the above tweescript and the propers cermen eds contain a full aux perfect stotement of all the proceedings and the programment be for me in the obone entitled Trace I dated the 18th day of December 1865 A Re M Dougnated Justice of the lever However are men by these presents that we Peter Cemorley and Bab Kinght of the county of Rane and state of Elleriois are held and persuly hounds unto the Besitent & Institut of the town of thehaclis also of the some county and state in the fearl same of two hundred and liverty five dolloes, current morey of the hunted states, for the fayment of which were and toty to be much, we brinde overelves our heies Executives and administratives faith severally and finely by these presents Bitues am hours and seves this eighteenth day of December 40, 1850, The condition of the above abligation is such, That Whereas The wish Presentent and Trusters, did on The tweefth day of december 40 1855, before 8.6, 102 Magne a Sustice of the Rever in and for the County oferenced never a judgment

against the above bounder for the sum of one hundreds dollars stell and - dollars casts from which said Judgment of the said parties the soid Peter Chroily has tother can oppene to the livent bout of the Loud learning and states Son of the said Peter Chronley, a have prosecute his said offer with effect and shall pay the said detet and costs in case the said progress shoes be officeed on the true of said appeal in the said liverent bount, their they about abligation to be word otherwise to recomme Solar and entired to before Sob Hught En at my offer that the lag of see 180 1855 AM Mayor Lasting the Peres Auch ofterwords to wil! on the 21 day of May the some heing. one of the does of the elley deren of will bount A8 1856, the following among other proceedings were hade to wit! The Besidents metis Of the tones of Alchabe Officel

We Shire day comes the Other College of Blowley & Plantiffs by Eastman their attorney & the defendant by degueson son motion of the plainteff et is ordered by the court that a July come wherefore

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come a freely of goods and lowful men tout, John Phheler Lymin Boldwen Donnethuel Face Garny, Lewis Fletcher Rechout Breeze Tomes Russel. Del Wanger Dovid Rich Lengo Rlott Eugene Teous & & Henebough who herry severally selected, and sworn wells come and ofter heaving the evidence produced + a partien of the agreement of Connect it is regreed by the porties that the frey may seperate smeet the court to morrow morning at 8 aclock. And oftenands to wit in the 22 & Dogg May 1856 the some being one of the days of said Bern of said bout the following many other proceedings were hook to and The Beselvet and Frustus The town of Albertes Peter Whoiley 3 this day even the porties to this suit by Then attys, und the pury hereto fore ene pormelled herein also come and after herening the bolomer of the evidence and acquire ent of cornell retire under charge of a swarm officer of this court to consider of their rendret & subsequently return ento curit for a verdet upon their oaths say were the frey find the defendant

Surely a assess the fine at twenty Jave dollars. Therespoon the plantiffs moves the court for a new treat ! And afterweeds to wit on the 26th day of May 40 1886 the some being one of the days of said term of said Courts the following armong other proceedings were hodo to wit' The Revident & Bustees of of the town of Italiacles Peter Cetrolley I appeal This day comes outs be heards the plointiffs motion for a new true heretofen sutired herew, after agreement of course the court being fully advised overrules said motion. To which ruling the plaintiffs Weift , His therefore considered by the Court that the Routeffs have a recover from the defendant the seem of Leventy five dolloes fine and that they have Escution therefor tou motion of defendant it is ordered by the bourt that evel porty pay their own wets To which ruleir of the event the Relff acepts progs an appeal to the supreme Court, which is allowed on condition that they enter with bonds in sum

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of \$100, with security to be approved by the court State of Illenines ? How Court Circut Court Cour Peter Olhviley & Sustice of the Peace on to be heards the above entitled course the blowiteffs appearing by their course Dite Eastween and the defendant by his Course Mepes Feiguson Varksa Henryton The some being in action of detate for the violotion of an advisorer in relation to the sale of intoxicating druks. The ploutings first offered in evidence The records, his -porting to be the seconds of the enferotion of the town of It Charles, I.M. Heeguson was then collect by the Pliffs as a witness and listified that the books offered in evidence was the records of the conferation of the love of Hehacles, Where there are part of defence truned to certificate of posting aspies of the ordinances on which this suit was predicated & which is hereofter set out in Jule 1 and states that the words of the most " were inserted since The commencements of this suit, by A. B. Mayne former clerk of the Corporation, at time certificely

was made, but not classe at time words were inverted, (Excepted to) Court allowed soils records to go to the jury as earlene in the case, little ray] "Low of It Charles Books of Records" A Chailes June 18th 1854, Boardoof Frestees and pursuant to a call of the President, I. I. Quivat Jab & Handall George & Flenens of The Bowmon and With Cogood, after being welled to order by the Presidents, on motion of dit. Boomen " the following ordinance was possed, " An ordinance relating to spirituous removes mixed fermented and intopecating legious " Lee 1. Be it ordoned by the Resident and Bustees of the town of Et Charles, Hee 2. Any person who shall sell botter or whough , any spiratuous vivous ferenented sensed or into parting " liquous within the corporate limites of said town " Except as hereinafter provided or who shall upon " the sale boster or getrange of any goods etrottels I want merchandise property chose in action " a whom any promise contract or a greenent · 4 presed or implied acept as hereinafter pro-, Diched, deliner or furnish or course to be delevered " or furnished a knowingly suffer to be taken or " received, any spirituous, reinous, ferenented " mujed or intoxecuting liquois, shall be considered n and adjudged quelty of a revisance and every o such preson shall upon everetion thereof 212322-57

" forfeit and pay to said Fresident ceres 1) Brusties the accur of twenty few dollars 1 for each and every offener, 1 Here feellow sects 3, 4. J. 6.7. of ordinances in some of the Boundary in tous of the Boards of Irus tees I cerdend that the class be servered to fast prin 1 -ted copies of the 2 test aforementioned ordi a monces or home the some published according · to low in some newspoper published in lower " Beards adjourned withouts day! Attest, A. B. Mosque electes. " I hereby certify that on the 24th day of June 1 1834 I causedoported copies of the ordinavers 11 possed by the President und Frustees of the lower of At Charles on the 15th day of June 1854 " relating to spiretuous, removes mixed fermented and entorceating legious to be posted in their of the must public places in soids town-4 Stehales Frene 24th 1854 A.B. M. Mogue elech Althor , sext colled P. J. Competock who testified ces follows, I know the defendants, Peter Emaily he does husiness in the lower of the lehveles on this he saed me too drinks of broady at his housing of November lest, at two different times, I poid him for the some , he also solds a puit of whitey on thiswin day to Reason leveraly (X4/ levers Gamenel

I reside at Botania, I went to Itahueles for the purpose of buying ligner, that the defendant might be prosented, I drout twice, on that evening at defendants, went to several other nousies and s aloones on some evening . drout fine or six times in all that evering . (question) stole whether you are a member of a temperance society and pledyeds not to use intorceating drinks, Colegeted to by Rettyobjection restoured I Are gon not a member of an organifation or body of men at Batooia called the auger or lever swerety; Laborated to by Hat o objection sestimet de jou not a member of a socrety who are pladyed to destroy the property of Ligion relleco! Laborated to by selffe a objection sustained Diels you go to It hackes to Buy tigues of this definition at the suggestion or request of an organized Land or society of men at Botovia or by a resolution of such a house, tessues, hell I hoully know whether I can areswer the question, there was no resolution possed, others three that I was going, it was sporter of by others, I 4 pected to have my 4 peuses poid, Tuestion I State whether you are a menter of a society swow to prosecute legenor cellers and to destroy their property. Tolyette by acops coursel a objection sustoined I sout how as any one offered to defrey my Expenses, had some expectation that they would be fived, I paid for the

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team . Ligious , no one furnished me any money Telloin resurrents How this meny you spoke of in the Confinction Cunto of Habueles, Counsel for defendent adent such to be the feet Muson Conoley voor, Toww defendant, keeps a Green in It Charles, I know of his sellering intoxicoting liquoes, he sold a punt to me on the 29th of November last at his morey in Etlehocles, I know of his selling ligur on two other occasions the some evening, he sold two drinks of broady to P.O. leaufestock on two deffunt accasions the some evening at his Invery DX 47 Klews Bound I live at Botance, went up to Et Charles to buy This liguor that defendant might be prosecuted I went to several other places the some evening I left the bottle of legion I purchased at or boes, it was whishey that I bought. I poid my own morey for it, do one promised to pury ung afences I went up with Competette, I spected perhapse I show get the more book I point out, State whether or mot you went to It charles at the request of on organized society at Bolovia! Acis! I don't think I did! Did you not go in prusuance of a resolution Janeha weiety, I did not that I am own of, it went with Competeets, so you not belong to an you. Ind hours at Botovie called the Augus some?

Johnsted to by fetths woused a objection evaluated the you not a member of an argunitation or everity of men sown to destroy begins excused and to destroy their property, Labyerted to a objection and to destroy many times did you drait legener on that evening, seek fine or six times. I did tota fruity good evist, Jenos Hodges sown; I know defendant he keeps a browny in Itleharles our the night in greation 127th of Maentary is went up to Itaharles and bought a paint of whichey winds points steft for it;

I live at secreva; went to Dehales for the purpose of purchasing ligion of the defendant that he might be prosecuted / Sweet I Do you belong to a body of men who our bounded together and aware to prosecute liquer selles, Tobjeted - objetion sustined / Guestion I side you not go to Atcheeles in preserver of a resolution of un organized body a society of men at Botovia a sleechers Aus! I did not fruet / side you not go at the request or suggestion of such a society, Aus; I tother with a Jese present relative to my going up previous to my going, Rolla Thunch swow, I am the Conferentian elists: of the town of thek voles There, referring to the book of records, offered in evidence an the revolts of the confiration of the tree of Itleherles, these ordimones and certificate of publication upon which cut is brought, are in the house writing of A.B. M. Mayne, he was at date of said indivious the

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AR. Mi Hague dwarn! I tawe defendant, reside at Excelvales, Releffs comment your book y records hunfarting to be the secures of the experition of the town of Heharles, to entress! Lity actiffs comment Rever to state whether or not there on the seemes of the corporation of the town of thehoeles, Aus; Thyon, Rline turn to the ordenover possed by the President and misters of the town of the hocker from 10 th 1883 and the certificate of posting auch ordinances in relation to the sale of certains ating drinks, ando state whose house writing they are in, Testness opened book to ordinance and certifical scowned them, auswered! They are in my hours writing, I was confinction clerk at the time, Thate whether you cansed such copies of those ordinares to be moder todos by hostiered of did, Did guen. conse onch copies to be posted up, of as where, I hod mode Jeften or twenty copies, I perted up one, on the ellie on the West side of Fre River, and in the charles, one on frost in the ellies en the Eevet side of the river, I ported too or their expres on the bridge across Has River, one in my office with one at the Past office, atters in defferent ports of the town . They were ported on the 24th of June 40. 1854 The words, "of the most" were added in the record book at the request unde by the direction of the Presedentand Inesters of the town of to Charles, The book of Recents of the confirmation was then always to go to thispiney as emilines, containing a diviner & intefreals shows estant, The show was are the testimony in the some way

The Reontiff which the following instructions smoothed 1-2-3-4, to the frey ----100 That the books perspecting to be the seconds of the Lucas conferation of the town of Flativeles are proper evidences in this case of all mothers therein evitoried, 31 That what is the three most public places in the town of Helweles is a question of feet for the ping to determine, and if they believe the peoper notices were duly posted in their public places of usout, such as the flowing wills on the Event Part affice, each is perfer evidence on the mestion of parting notices of posting notices 4th That the minutes and entries made by A. R. Mogne while in the proper discharge of his office as clish of the Conferation of the said town of Alcharles, in the proper books of records of series confunction are admissable as evidence, in this The defendant their asked the following westwelves 020 1, 2, 3, 4, 5, 6, to be given by the bourt which were allowed and read to the juny, To the going of which the alegge of their comment them a ceptent, 1)2322-0]

Defendents Tustinehous 126 The ping are instructed that this is a period action and in order to entitle the plaintiff to seever he is held to street proof in every particular and all presumptions are in four of the defendant, 2 d That incless the plointiffs has proved that the ordinance declared on was properly published and in the morner presented by the statute the defendant is entitled to judgment -That proof that expres of the ordinarces were ported is not sufficient the flowintiffs must fower that such copies were printed copies and the burden of proof is upon the plaintiff in this portrenter That proof that copies of such ordinances were ported in cutoin specified places within the limits of the enfuntion of the town of the hacles is not sufficient enless the plointiffs has also offermoting proveds that such copies were printed express and that at least there of the specifical places when the some were ported, were there of the most public places within the enfunds limits of soil town, That the certificate of the putatecotion a posting of the ordinares contained in the book of seconds of could town of Itahodes, is no evidence whotever of the publication of said ordinance and the July have no right to consider to

6th That although witnesses may not be emperched by proof of general reputation for truth and ververty atice the forest of your pury are not bounds to believe them, if they believe that the position of auch witnesses in relation to the case, destroys his endibetely orig their cross Governation shows their worth, quedit a that any of the circumstoners detacted by The proof shows their enverthy of credit -The court then of its own volution your the following instruction in writing [Qualinetrow by the Court! That the pury are the judges of the creditality of the betweenes and if under all the eir, curistonces developed in the case The testimony of any of the witnesses who how secone is enworthy of execut the pring should disregard it, It does not follow That because a witness has sworn to an alledged fort the pury one to receive his lething as true, but the prey are to tothe into consultration the morner of the withers the stolements he mokes, his connection with the facts about which he testifies, the motives by which he seems to have been influenced and the spirit in which he opposently quies his testimony, and if the guny think, that his evidence is unwithy of belief & that it aught

not to central their windiet, they one at likely to disregards it, The love has ever looked with disformes upon informers and spies, ando while the fact that a witness may how acted in that showeter does not under the low abso. -buttly disquislify him from testifying, it is a executives which if shown by the proof to suit, rendendo his voidence hobbe to suspición and comment, and it is proper for the gray to sentings the testimony of a witness a witnesses if any, who may appear by the saidener to live acted in that copacity, If the pury believe from the testernoung that the witheres in this case lived in a different town from that of the defendant and that with a design and preconcerted plan formed by themselves in connection with others to entrop the defendant into the commusion of an offence in order to prosecution course to be prosecuted for the some, they went to At Charles, the place of business of the defendant, they our circumstances proper to be cusidered by the pury in determining what weight is to be attached to their evidence, the love considering that a person who by curring unde actifice causes another to commit an offenerics if not equally quiety of the offences at least so for investmed in the trousaction as to be looked whom with never in less suspicion according to

circumstances of the case, tooth the motives of the witherses you have nothing to do, any further thou it offects their credibility, however illyudged and whally in admissable you may regard's as the court certainly does regard, efforts and means for the suppression of the sale of intopicating durks , such as the proofs in this case shitet, you on atile not required to disregord their testring merely because you muy desprow of their conduct, if you think their testimony withy of belief, It is for given gentlemen under all , The circumstonees to see what endence is to he given to the several artiresses who shows been even in the cose;

To the giving of which instruction so given the pltffe by their coursel then and then weefted,

Buene & Helson The

Know are men by these presents that we the President and Invetus of the train of It Charles as Principals and Roll Frees as swely are helds and fring hounds ento Peter Cervily in the sering our hundred docever to which sure were and truly to be work we built aneselves oncerson heis and anyis James of their presents The Constituen of this ablegation is such that where The President and musting of the town of Itlehales lately neovered a fregment as Peter Cervily Jer The sum of twenty Jene dollars downges in the Home levent leisant levent from which prelyment they have project an appeal to the supreme event Now if the soul Resident and quatur of the town of It tehacles shall payor course to be poil all easts enterest cereb lowers in ever the soil Judgment sholl be offermed and also duly prosecule their soul appear them the above obligation to be void atterver to be and recon in fuer Jone unde effect bothess our bouts sent the seve of soil experition this 29th day of May 1856, I I. Dervet Extremetion of the North French Con of the Justine append ! 2676

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Hale apollmois I Pane ?? of the 16 am County Ceirent Court in and for said bounty and state ofouraid do hereby cutify that the above and foregoing are true full perfect and complete whies of the houserift from the Justice of the Peace surrous issued from the Clerks office of the Hour Court leir out Court, Beie of Eceptions, orders of court and appeal Bounds, on file in my office in the above entitled couse Nectress Face of Tought Clerk and the seal thering of Much 80 1857 Ph. Itnight

The President and Justies geter OMailey & House be wirent leaved by Eastmon that attorney and ossyus the following errors in the stone withtest Bestict of the Juny was against the 1st " The court admitted improper eviden, 24 3. L The court & chuled proper evidence 4 the plaintiffs a new trial, 54 the court end in going to the frey as the low in the courseach a every mittenetion orked of the defendant a expectally in giving the 1st 5th the instructions -64 The event ened in giving an instruction of his own volution , - struction with The low solso in giving bod love in The con Dite Gentinen ath for pells authe before lays there is we serve to the says prof to Farmsworth of hugely 212322-13

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The Presidento Dustes Low of Ut Charles Peter Cemarly Filed Much 17.1857 Leland, Record

United States of America:

STATE OF ILLINOIS,

KANE COUNTY, SS.

Pleas before the Honorable Isaac G. Wilson, Judge of the 13th Judicial Circuit in the State of Illinois, and Presiding Judge of the Kane County Circuit Court, at a term of said Court begun and held at the Court House in Geneva in said County, on the 12th day of May, A.D. 1856—Present the Hon. I. G. Wilson, Judge.

L. P. BARKER, Sheriff.

Attest: L. Dearborn, Clerk.

Transcript from Justice of the Peace, filed in this Court, January 23d, A. D. 1856.

SUMMONS IN DEBT.

STATE OF ILLINOIS, KANE COUNTY, SS.

The People of the State of Illinois to any Constable of said County, GREETING.

You are hereby commanded to summon Peter O'Mailey to appear before me, at my office in St. Charles, on the 12th day of December, 1855, at 9 o'clock A. M., to answer the complaint of the President and Trustees of the Town of St. Charles, in an action of debt for the violation of the second section of an ordinance passed by said President and Trustees June 15th, 1854, prohibiting the sale of spirituous, vinous, fermented, mixed, and intoxicating liquors, in said said town, for a failure to pay them penalties—a certain sum not exceeding one hundred dollars—and thereof make due return as the law directs. Given under my hand and seal, this 5th day of December, A.D. 1855.

A. R. McWAYNE, J. P. (SEAL.)

2. Returned served, by reading to the within-named defendant, Dec. 7, 1855.

Henry M. Clark, Constable.

Subpoena issued and was served on Zenas Hodges, Ransom Conley, P. J. Comstock, and J. D. Clyde, as witnesses in this cause.

Cause came on to be heard before A. R. McWayne, Dec. 12th, 1855.

Judgment given by the Court against defendant, for one hundred dollars debt and costs of suit.

Defendant appealed to Kane County Circuit Court, and filed his appeal bond, with Job Knight security, the 18th day of December, A.D. 1855.

4. On the 21st day of May, in the Kane County Circuit Court, this cause came on to be heard:

THE PRESIDENT AND TRUSTEES OF THE TOWN OF ST. CHARLES, vs.

APPEAL.

vs.
PETER O'MAILEY.

The plaintiffs appear by D. L. Eastman, their attorney, and the defendant by J. H. Ferguson, etc., his attorney; and on motion of the plaintiff, a jury came, and were duly sworn to try the case.

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3.

The plaintiffs first offered in evidence the records purporting to be the records of the corporation of the town of St. Charles. J. H. Ferguson was then called as a witness, and testified that the book offered in evidence was the records of the corporation of the town of St. Charles. Witness then, on part of defence, turned to certificate of posting copies of the ordinances on which this suit was brought, and which is hereinafter set out in full, and stated that the words "of the most" were inserted since the commencement of this suit, by A. R. McWayne, former clerk of the corporation at time certificate was made, but not clerk at time words were inserted. (Excepted to.) Court allowed said records to go to the jury as evidence in the case.

Title Page:

"TOWN OF ST. CHARLES BOOK OF RECORDS."

"St. Charles, June 15, 1854. Board of Trustees met pursuant to a call of the President—J. T. Durant, Job S. Randall, George G. Stevens, T. H. Bowman, and W. F. Osgood.

"After being duly organized, on motion of F. H. Bowman, the following ordinances were passed by the Board:

"An Ordinance relating to spirituous, vinous, fermented and intoxicating liquors.

- "Sec. 1. Be it ordained by the President and Trustees of the town of St. 8. Charles—
 - "Sec. 2 Any person who shall sell, barter or exchange any spirituous, vinous, fermented, mixed or intoxicating liquors, within the corporate limits of said town, except as hereinafter provided, or who shall upon the sale, barter or exchange of any goods, chattels, wares, merchandise, property, chose in action, or upon any promise, contract or agreement, express or implied, except as hereinafter provided, deliver or furnish or cause to be delivered or furnished, or knowingly suffer to be taken or received, any spirituous, vinous, fermented, mixed or intoxicating liquors, shall be construed and adjudged guilty of a nuisance; and every such person shall, upon conviction thereof, forfeit and pay to said President and Trustees the sum of twenty-five dollars for each and every offence.

 "J. T. DURANT,

President of the Board of Trustees.

9. "Ordered, that the clerk be required to post printed copies of the two last aforementioned ordinances, or have the same published according to law, in some newspaper published in town. Board adjourned without day.

"Attest: A. R. M'WAYNE, Clerk.

"I hereby certify, that on the 24th day of June, 1854, I caused printed copies of the ordinance passed by the President and Trustees of the town of St. Charles, on the 15th day of June, 1854, relating to spirituous, vinous, mixed, fermented and intoxicating liquors, to be posted in three of the most public places in said town.

"St. Charles, June 24th, 1854.

A. R. M'WAYNE, Clerk."

10. P. J. Comstock, testified: know defendent, Peter O'Mailey; does business in St. Charles, in this County; keeps a grocery; he sold me two drinks of brandy at his grocery, on the 29th day of Nov. last, at two different times; I paid him for the same. He also sold a pint of whiskey on the same day, to Ransom Conley.

Cross Examined:—I reside at Batavia; went to St. Charles for the purpose of buying liquor, that the defendant might be prosecuted; I drank twice on that evening at defendant's; went to several other groceries and saloons on same evening; drank five or six times in all that evening. Question. State whether you are a member of a temperance society, and pledged not to use intoxicating drinks. (Objected to by plaintiff, sustained.) Did you not go to St. Charles to buy liquor of defendant at the suggestion or request of an organized band or society of men at Batavia, or by a resolution of such a band? Ans. Well, I hardly know whether I can answer the question; there was no resolution passed; others knew I was going; it was spoken of by others; I expected to have my expenses paid. Question. State whether or not you are a member of a society sworn to prosecute liquor sellers, and to destroy their property? (Objected to and sustained.) Don't know as any one offered to defray my expenses; had some expectation that they would be paid; I paid for team and liquor; no one furnished me any money. (Main resumed.) Was this grocery you spoke of, in the corporation limits of St. Charles? Counsel for defendant admitted such to be the fact.

Ransom Conley, sworn: Know defendant; keeps a grocery in St. Charles; know of his selling intoxicating liquor; he sold me a pint on 29th of Nov. last, at his grocery, in St. Charles; know of his selling liquor on two other occasions the same evening; he sold two drinks of brandy to P. J. Comstock on two different occasions the same evening, at his grocery.

Cross Examined:—I live at Batavia; went to St. Charles to buy this liquor, that defendant might be prosecuted; went to several other places the same evening; left bottle of liquor I purchased at Dr. Coe's; it was whiskey; I paid for that I bought; no one promised to pay my expenses; I went up with Comstock; I expected I should perhaps get the money back I paid out. State whether or not you went to St. Charles at the request of an organized society at Batavia? Ans. I don't think I did. Did you not go in pursuance of a resolution of such a society? I did not that I am aware of; I went with Comstock. How many times did you drink liquor on that evening? Ans. Five or six times; took pretty good swigs.

Zenas Hodges, sworn: I know defendant; keeps a grocery in St. Charles; 27th of Nov. last, went to St. Charles and bought a pint of whiskey, and paid for it (of defendant.)

Cross Examined:—I live at Geneva; went to St. Charles for the purpose of purchasing liquor of the defendant, that he might be prosecuted. Did you not go to St. Charles in a pursuance of a resolution of an organized body or society of men at Batavia or elsewhere? Ans. I did not. Ques. Did you not go at the request or suggestion of such a society? Ans. I talked with a few persons relative to my going up previous to my going.

Rolla French, sworn: I am the corporation clerk of the town of St. Charles. These (referring to the book of records offered in evidence) are the records of the corporation of the town of St. Charles. These ordinances and certificates (referring to the ordinances and certificates of publication, upon which suit is brought,) are in the hand writing of A. R. McWayne; he was, at date of said ordinances, the clerk of said corporation.

A. R. McWayne, sworn: Know defendant; resides at St. Charles. (Pltff's counsel gave book of records purporting to be the records of the corporation of the town of St. Charles, to witness.) By Pltff's Counsel. Please to

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11.

state whether or not these are the records of the corporation of the town of St. Charles? Ans. They are. Please to turn to the ordinances passed by the President and Trustees of the town of St. Charles, June 15th, 1854, and the certificate of posting such ordinances in relation to the sale of intoxicating drinks, and state whose hand writing they are in? Witness opened book to ordinance and certificate, and examined them. Ans. They are in my hand writing; I was corporation clerk at the time. State whether you caused such copies of those ordinances to be made? Ans. I did. Did you cause such copies to be posted up, if so, where? I had made fifteen or twenty copies; I posted up one on the mill, on the West side of Fox River, in St. Charles; one on post in mill, on the East side of the river; I posted two or three copies on the bridge across Fox River; one in my office and one at the Post Office; others in different parts of the town. They were posted on the 24th day of June, A. D. 1854. The words "of the most" were added in the record book at the request and by the direction of the President and Trustees of the town of St. Charles.

The book of records of the corporation was then allowed to go to the jury as evidence, containing ordinance and CERTIFICATE above set out. The above was all the testimony in the above case.

PLAINTIFF'S INSTRUCTIONS.

1st.—That the book purporting to be the records of the corporation of the town of St. Charles, is proper evidence in this case of all matters therein Given. contained.

2nd .- That what is the three most public places in the town of St. Charles, is a question of fact for the jury to determine, and if they believe the proper notices were duly posted in three public places of resort, such as the flouring mills on the East and West sides of the river in said town, and at the Post Office; such is proper evidence on the question of posting notices.

Refused.

4th.—That the minutes and entries made by A. R. McWayne while in the proper discharge of his office, as clerk of the corporation of the town of St. Charles, in the proper book of records of said corporation, are admissable as evidence in this case.

The defendant then asked the following instructions: No. 1, 2, 3, 4, 5, 6, to be given by the Court, which were allowed and read to the jury; to the giving of which, the plaintiffs then and there excepted.

15. 1st.—The jury are instructed that this is a penal action, and in order to entitle the plaintiff to recover, he is held to strict proof in every particular, Given. and all presumptions are in favor of the defendant.

2nd.—That unless the plaintiffs have proved that the ordinance declared and was properly published, and in the manner prescribed by the Statute, the defendant is entitled to judgment.

3rd.—That proof that copies of the ordinance were posted is not sufficient; the plaintiffs must prove that such copies were printed copies, and the burden of proof is upon the plaintiffs in this particular.

4th.—That proof that copies of such ordinances were posted in certain specified places within the limits of the corporation of the town of St. Charles, is not sufficient unless the plaintiff has also affirmatively proved that such

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14.

Given.

Given.

copies were printed copies, and that at least three of the specified places where the same were posted, were three of the most public places within the corporate limits of said town.

5th.—That the certificate of the publication and posting of the ordinances contained in the book of records of said town of St. Charles, is no evidence whatever of the publication of said ordinance, and the jury have no right to consider it.

6th.—That although witnesses may not be impeached by proof of general reputation for truth and veracity, still the jury are not bound to believe them, if they believe that the position of such witnesses in relation to the case destroys his credibility; or if their cross examination shows them unworthy of credit; or that any of the circumstances detailed by the proof shows them unworthy of credit.

17. The Court then, of its own volition, gave the following instructions in writing:—

That the jury are the judges of the credibility of the witnesses, and if under all the circumstances developed in the case, the testimony of any of the witnesses who have sworn is unworthy of credit, the jury should disregard it. It does not follow that because a witness has sworn to an alledged fact, the jury are to receive his testimony as true; but the jury are to take into consideration the manner of the witness, the statements he makes, his connection with the facts about which he testifies, the motives by which he seems to have been influenced, and the spirit in which he apparently gives his testimony; and if the jury think that his evidence is unworthy of belief, and that it ought not to control their verdict, they are at liberty to disregard it.

The law has ever looked with disfavor upon informers and spies, and while the fact that a witness may have acted in that character, does not, under the law, absolutely disqualify him from testifying, it is a circumstance which, if shown by the proof to exist, renders his evidence liable to suspicion and comment, and it is proper for the jury to scrutinize the testimony of a witness or witnesses, if any who may appear by the evidence to have acted in that capacity. If the jury believe from the testimony, that the witnesses in this case lived in a different town from that of the defendant, and that with a design and preconceived plan formed by themselves in connection with others, to entrap the defendant into the commission of an offence, in order to prosecute or cause him to be prosecuted for the same, they went to St. Charles, the place of business of the defendant, they are circumstances proper to be considered by the jury, in determining what weight is to be attached to their evidence, the law considering that a person who by cunning and artifice causes another to commit an offence, is, if not equally guilty of the offence, at least so far involved in the transaction as to be looked upon with more or less suspicion according to the circumstances of the case.

With the motives of the witnesses you have nothing to do any further than it affects their credibility; however ill-judged and wholly inadmissable you may regard, as the Court certainly does regard, efforts and means for the suppression of the sale of intoxicating drinks, such as the proofs in this case exhibit, you are still not required to disregard their testimony merely because you may disapprove of their conduct, if you think their testimony worthy of belief.

It is for you gentlemen, under all the circumstances, to say what credence is to be given to the several witnesses who have been sworn in the case.

To the giving of which instructions so given the plaintiffs by their counsel then and there excepted.

Jury retire and return into Court with verdict of \$25 for plaintiffs.

Plaintiffs enter their motion for new trial—on argument of motion, Court overrules said motion, and judgment is given in favor of plaintiffs for \$25 fine, and each party pay their own costs. To which ruling of the Court the plaintiffs except and prays an appeal to the Supreme Court, which is allowed on condition they enter into bond in sum of one hundred dollars, with security to be approven by the Court.

19. And afterwards, to wit: on the 29th day of May, 1856, the said plaintiffs came and filed their bond with Rolla French as security; which was duly approved by the said Court, in the said sum of \$100.

21. All of which is duly certified to by clerk of said Court, the 29th day of May, A. D. 1856, under his hand and seal of said Court.

Abstract by D. L. EASTMAN.

Plaintiffs' Attorney.

The President & Francis of the Jour of es Charles Peter O Maily Filed Apr 218 1857 De Goeland Olerh

STATE OF ILLINOIS, SUPREME COURT,	ss. The People of the State of Illinois,
TO THE SHERIFF OF	THE COUNTY OF Italian GREETING:
BECAUSE, In the record	and proceedings, and also in the rendition of the judg-
ment of a plea which was in	the Circuit Court of have county,
before the Judge thereof, bet	tween The President and Trusters
of the lower of	St. 8 horles
plaintiffs a	nd Peter O Mailey
defendant, it is said that man	nifest error hath intervened, to the injury of the said
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Plaint Hs	the state of the s
as we are informed by the	complaint, the record and proceedings of which said
	to be brought into our Supreme Court of the State of
Illinois, at Ottawa, before the	e Justices thereof, to correct the errors in the same, in
	ording to law; Therefore, We Command You, that by
good and lawful men of you	r county, you give notice to the said peter O Mark
that he hand annage had	are the Justines of our said Supreme Court state next a
term of said Court to be hel	den at Ottawa, in said State, on the Monday
in Angel - nor	t, to hear the records and proceedings aforesaid, and the
arrang assigned if he al	hall sec fit; and further to do and receive what said Court
	nd have you then there the names of those by whom you
shall give the said Peter	Mariles of those by whom you
Shan give the said Je see	notice, together with this writ.
	WOTCESS, The Hon. WALTER B. SCATES, Chief
	Justice of our said Court, and the Seal thereof at
	Ottawa, this /9 the - day of March in the
	Year of Our Lord One Thousand Eight Hundred and
	Fifty-Leven, Leland
	Clerk of the Supreme Court,
12322-217	B. J. B. Rice Deputy

Servere the within summous by revely to the with nomed Peter Celuvily the some the 20th day of Murch +01857 Levere on the rollings, and also in the rolling speed of the proceedings To true of the the Count of I Count By 16 Colorte Judge of land Winder exerced to the injury of the said defendant, it is said that manifest error Plain 17/1 tegord and proceedings of as we are informed by A. complaint I coord and proceedings of judgment we have caused to be brought and four Supreme Court of Hinois, at Ortawa, before the Justices thereof, to correct the errors in due form and manner, according to law; Tetagrong, WE Commann 1 good and lawful men of your county, you give cotice to the said that the and appear before the Justices of our said State, on the free months of the first of the first of the first of the first on the first of the first on the first of the first on th The second of th errors hasigned, if /c shall see ht; and further to do and receive what said Court shall give the said Pe let 18 Price Les Ottawn, this /? " day of Max & in the Clerk of the Supreme Court,

STATE OF ILLINOIS, ss. The People of the State of Illinois, supreme court, so the Circuit court for the country of have greeting:

BECAUSE, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of have County, before the Judge thereof, between the President and Trustics of the town of St. Charles

plaintiffs and Peter O Mailey-

defendant it is said manifest error hath intervened, to the injury of the aforesaid

by Muic complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the Hind Turndry in Maril next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Justice of our said Court, and the Seal thereof, at Ottawa, this / day of March in the Year of Our Lord One Thousand Eight Hundred and Fifty-Six

Leleund Clerk of the Supreme Court.

By J. B. Rico Deput

The Fread husters of SA Charles Peter O Mailey Writ of Error File Mench 17. 1817 Dent Olish

The Buildent & hustus of the town of H Charles Supreme Court . l'Attora fine Lerm Peter Collailey & 48,1836 This suit has originally wermended befor ASO. Mothague by a mogestrate, for the scototion of an ordinance possed from 18th 1856 by the hundento husties of the town of it wholes in relation to the sole of interesting dents -Come was truit see 12th 1855 - and Judge was given for \$100 x costs appeal tother to Now levent levent - trick by pury May 21 st 1886, recretect for Reliffs for 25, and costs ben approved by the locust -This is an action of betit for biololioing a toon orderwise possed by weither of a charles Journal an pay 252 of the Source 1.558, The 22 detecte of which which Charles of its 7th section provides. That the Resident a housies oshall how power to suppress and probetil the selling hostering achonging and hoffer of bries gin Il sum broudy, tolickey a other intesteding smiles. o within the limits of said toon " in cered inser this act a very by low, and inserted be possed an endotong to this act - may be recovered together with costs before very Justice of the Peace and the corporate name and the feit process shall be surroused and shall be lowful to declar generally in teat, stating the clove of the wet a criticaner under which the some 12322-23

the some is downed a - The net is debut a public vete set I proudes That said Presented nucleuse shall require their clests and it shall be his duty, to mote and hop a fuel and forthful nearl quel their proceedings by bus and ordinances, and of the trul moune and place of publication of met by loves in a book, to be provided for that purpose and and book periperting to be the Econds of the corperation the loon of Hehveles shall be received in all courts esthout further proof, as evidence of all mothers therew contoured Auch all adrioness before tothing effect a hale be published in soit toon at least ten dies and o necespoper published an said toon or be posting wip privated copies of the some in at least their of the must public places in the wood The first point we make is the vertet week against the evidence -O. V. leowethth shower Left - week hum, two Druds, of broudy, at two different trues, an 2 gt of Not. 1855 - and one put of whisher are some day to learly leausour bouch, steeres, seeft soed him a puit whishey - and that he wed two dunks of Proudy, on two defferent accusions, 29th of Show, 1855 to D. J. Courtech -Hadeis swees, he bought on put of whisher, Joest the 27thy Nov. 1855 - mothing four defferent soles, at four different times of the social It section of radia ordinaries which

movides, stry person who shall see hurter is Il achouse any spirituous receives fermented 1 mused a intoxicolory lexions, within the experient limits frace town - whom conviction thereof shall for first and pay to said President hustras the sung twenty fine dollows, for each and Hen on four Distinct and portion offences distructly and porterely prover - by corroborative testimony - unimperched and unimperchable, except so for as the court of its own wolthor sought for this accusion to set down upon the botheries by boy of a speech to the fung under the guise of withinstrous from the bench" I say set down may it please your Houses, for There is not one word of testimony that tends to show, that these titless her not buthful reliable and couded men, and no mon douds (revede to brown to to say that they were not show every reproved and shown of suspicion, and the low presumes (as these bothess had once before testified before the magnitude to the some foets) that as no attempt were mode to imperch their general chardler, that it stood whom every suspicion las they do in forth may it please your Houses. The only Escuse for this most sugular setting" of this most pecution levent being that their bothesses most fronkly soul They bent to this soggery to purchen the leguer in question that seft might be Houses; They mode no "sewes" they look sig means to entrop they concerled not Their puepous four Humans, that indeprout as They 112322-24

had a sight to he , when their fathers , butters , chiedien friends her mode butes-ennimels perfects intests lunties and consigned to an early doth by the informus, acts of this defendant - they cookedly went spurehoud of The out - thereelves the ligion - that he's conviction might be sun, that he might be mode to ful , only when such men con feel in his this your thouses, they on to be set upon by some mon in the apolless wher of Switch the Internal get there men for no other enine trust he the asses to be redden by I so a court before and a pury That Lustier and morolety may he referred. The rentest is polyobly agoust the evidence and at feit blush must struke every much suprepulsed, as being agoust the weight. The evidence, and as this lout has reportedly dreided in such a core must be referred The Love as given by The Court in The It withoution asked by beft - is essureous, That the certificate of the publication and horting of the adminances contoured in the book of records of well toon of Hehreles is no socienes wholever of the publication of social ordinances and the free love no right to concercion it hurfating to be the usually said toon of Helineles have be received in all lowerth inthout

further proof as evidence fall mothers Theren contowied, which book watories the following certificate - I hereby certify that an the 240t May June 1854, I could printed which of the ordinance possed by the President huches of the born of the hoeles on the 15th day of Zunie 1854, aloting to spiretuous univers muxed fermented and intoxicoting Deques to be ported in the of the most public places in soid town of the Nobeles have 24th 1834 A. M. Whogue elech, It was given to the pury as encliner that subject to said institution for the surple reveau that it did not specify, the posterior sloves, when such whees were ported. This instruction is clearly enouvers, It is most certainly sufficient that the certificate of the click is are the langue of the Low Suppose this certificate how designated the identicul places where each why of souds outinances, as is pointed out by the between More - and he should sweer They were three of the most public places" would it be any mon proof that the notices were posted as is specified in the Charter - that his cultificate which is in the longung of the organic at! But the instruction soys such certificate is no evidence wholever of the publication fruid ordinance " The Congonie act sons the Books-purporting to be the Books or records of the corporation of said town of theherles shall be received in all courts without, further proof as evidence of all mothers theren contoured Now this certificate is apart of soid Bock gleeness

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and if the aboute is to govern is evidence of all mothers therein contoured - whene follow the only conclusion that this instruction was not the Low and though it may be roud that the pury must not hove hem mislevel by this instruction as they must how found the ordinances duly published, before they could hour found for the selffs, get this does not necessarily follows as compromise verdicts are often mode up - in violotion of the splicet devetion of south token by suros and it is most everdent that in the present case, some such action was host by The Jung che They should have found for the out or \$100, for the Petithe as one or the other should as a necessary reguence follow from the Low + evilence as given in the case, and while Courts sometimes may possibly see why a case might not be prejudiced by enviewes Low how the bout - weed hite not olivers. ween coses because crowneous tore is given, This Count fall under such, a closs of cases as the vertet count he werrouted by the Tow weeds the evidence, in any affect. as neither seat no substantial perties has not hem done in the present case, The evidence of the loctuess Whome is clear a application this point and This Court is asked to refer to the precese bouls used by The between and their reference to the subject their before the bothers, The houtien of the believe our the between and but our conclusion on he had therefor,

The Third point moch is the volunties, our motion -It is not the love as offlicable to this ease, from the bound, of both love & fact, The language of the Court es ever looker with disfour on informers a spies, se this is not the low, all the elementon, buties home foured this does of technion and the low in all modern agest has so for eneverageds this class of destrucy as to desolve them from actual crime - at common low and fenalties have often here given primary empous by statules of defficient states, to encourage purous the forwards and declar such trivaled that the loves may be recirclected and the comments or feofle protection, Novemes bui En 1193 1 Leien Ev 412 - 415 = Withthe motives of the totherses you how no Thing to do any forther than it effects their endibitet, however it judged and wholly in admissable gun may regard, asthe Court certouily does he. [2320-26] gard efferts and means for the

sufficient of the soling entoxicoling divites as the proofs in this con The low requires The Court to instruct the prey in writing at to the low of the care this it no when offices the Court to instinct The freezes to the feels in a care, as the Court must workend much be to in this ciese, Purples Statels 829 (16/XXI 200 284 (16) XVI 11 415 Modern thus despond of the points of desire to make I come add no mon , thou to say that duty to my clients a to the Court below buth dements a review of this core Zy a miliar that is deput the local interests that quertions like there in this word present would which may impluees every more whether upon the Beach or in other in portant fasetions, at times of political and other sugues & His to an elevated Judicion that the people tun for Justini Il beuter