

12322

No. _____

Supreme Court of Illinois

Pres.& Directors of the Town
of St.Charles

vs.

O'Mailey

71641  7

40

The President & Trustees
of the Town of St. Charles

vs

Peter O Mailey

80

1857

12322

X

United States of America }
State of Illinois } Boone County }

Plas before the Honorable
Isaac G. Wilson Judge of the 13th Judicial
circuit in the state of Illinois and presiding
Judge of the Boone County Circuit Court at
a Term of said Court begun & held at
the Court House in Geneva in said County
on the 12th day of May A.D. 1856,

Present The Hon Isaac G. Wilson Judge
" Lawrence P. Barker Sheriff

Attest L. Dearborn Clerk

Be it remembered that the following
transcript was filed in the Boone County
Circuit Court on the 23rd day of January A.D.
1856 which is in the words and figures following
to wit:

State of Illinois } The People of the state of Illinois
Boone County } to any constable of said County
meeting!

You are hereby commanded to summon
Peter Moily to appear before me at my
office in Alton on the 12th day of ~~December~~
1856, at 9 o'clock A.M., to answer the complaint
of the President and Trustees of the town of Alton
in an action of debt for the violation of the
second section of an ordinance passed
by said President and Trustees June 18th

1854 prohibiting the sale of spirituous, various
fermented, mixed and intoxicating liquors
in said town for a failure to pay their penalties
a certain demands 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. B. W. Wagon J.P. &c

(on the back of which summons are the
following words & figures to wit) Returned served
by reading to the within named defendant see 7,
1855 Henry M. Clark constable, cost, \$6

State of Illinois } The people of the state of Illinois
Kane County } To John Hands, James Hodge, Ransom
Canaly, P.D. Comptstock J.D. Clyde, you are hereby
commanded to appear before me at my office in
St. Charles on the 12th day of Dec 1855, at 9 o'clock A.M.
to testify and the truth to speak in a matter in suit
wherein the President and Trustees of the town of St.
Charles are Plaintiffs and Peter C. Moily is
defendant and this you are not to omit under
the penalty of the law. Given under my hand
and seal this 10th day of Dec A.D., 1855

A. B. W. Wagon J.P. &c

Justice of the Peace

(Enclosed as follows) Returned served by reading
to the following named witnesses, John D. Clyde
W.P. Palmer see 12th 1855, James Hodge, Ransom
Canaly P.D. Comptstock see 11th 1855, cost \$1.00

Henry Clark constable

The President and Trustees of the town of
St. Charles } Action debt for the violation
vs } of sec 2^d of an ordinance passed
Peter O'Moily } by said President and Trustees
of the town of St. Charles June

Justice's Dec-15th 1854 prohibiting the sale of vicious fermented
beverages &c mixed and intoxicating liquors in said town -

Summons 10th December 5th 1855, summons issued returnable
East July 20th Dec, 12th 1855 at 9 o'clock A.M., delivered to Henry

subpoena 18th 1855, Mr. Clark Const, see 7th 1855 summons returned
4 o'clock 20th served by reading to the defendant by Henry

and subpoena Mr. Clark Const, fees 30^{cts}, see 10. 1855; subpoena
sub. 11th 1855 issued at ptiffs request, delivered to Henry Mr. Clark

Const, see 12. 1855 subpoena returned, served
Const. fees by reading to John D. Clyde & P. Palmer Junors

summons 20th Hedges Ransom Const. & P. J. Comptstock by Henry Mr
Const, fees 1.00, see 12. 1855 Parties appeared

" Sub. 1.00 and cause tried, and James Hedges, John D
Winters & P. J. Comptstock sworn

as witnesses on part of the ptiffs, defendant
introduced no testimony, and after hearing

the cause and considering the testimony
it was considered by the Court that the

said defendant is guilty of the violation
complained of and a judgment is rendered

in favor of Plaintiffs against defendant for
the sum of one hundred dollars debt

and also costs of suit - witness sworn &c.
closed but - - - - -

State of Illinois } J A R W Wagoner a Justice
Stearns County ss } of the Peace in and for
the said County do hereby
certify that the above transcript and the
papers annexed contain a full and perfect
statement of all the proceedings and the
judgment before me in the above entitled
case, dated the 18th day of December 1855

J A R W Wagoner

Justice of the Peace

Know all men by these presents that we
Peter Connolly and Job Knight of the County
of Starns and State of Illinois are held and
firmly bound unto the President & Trustees
of the town of Alhambra also of the same County
and State in the penal sum of two hundred
and twenty five dollars, current money of the
United States, for the payment of which well
and truly to be made, we bind ourselves
our heirs Executors and administrators
jointly severally and firmly by these presents
Witness our hands and seals this eighteenth
day of December A.D. 1855. The condition
of the above obligation is such, that whereas
the said President and Trustees, did on the
twelfth day of December A.D. 1855, before J. A. R. W.
Wagoner a Justice of the Peace in and for
the County aforesaid, recover a judgment

against the above bondmen for the sum
of one hundred dollars debt and — dollars
costs from which said judgment of the
said justice the said Peter McMailey has
taken an appeal to the Circuit Court of the
said County and states: That if the said
Peter McMailey, shall prosecute his said appeal
with effect and shall pay the said debt
and costs in case the said judgment shall
be affirmed on the trial of said appeal
in the said Circuit Court, then the above
obligation to be void otherwise to remain
in full force and virtue
Given and entered to before me
at my office the 18th day of Dec
1855 J. H. McNamee Justice of the Peace

Peter McMailey Esq

Job Knight Esq

And afterwards
to wit: on the 21st day of May the same being
one of the days of the May Term of said Court
1856, the following among other proceedings
were had to wit:

The President & Trustees
of the town of St Charles

Appeal

vs
Peter McMailey

This day comes the
Plaintiffs by Counselor their
attorney & the defendant
by Ferguson & on motion of the plaintiff it is
ordered by the court that a jury come upon

came a jury of good and lawful men to wit;
John P. Wheeler Lyman Boldwin Donald Hues
Isaac Conroy, Lewis Fletcher Richard Bruce
James Russell, D. C. Wanger David Rich
George Platt Eugene Stearns & H. H. Henshaw
who being severally selected ^{tried} and sworn also
came and after hearing the evidence
produced & a portion of the argument of
counsel it is agreed by the parties that
the jury may separate & meet the court
tomorrow morning at 8 o'clock.

And afterwards to wit on the 22^d day of
May 1856 the same being one of the days
of said Term of said Court the following
among other proceedings were had to wit
The President and Trustees
of the town of St. Charles

vs } Appeal
Peter Mosley } This day came the
parties to this suit by
their attys, and the jury heretofore em-
panelled herein also came and after
hearing the balance of the evidence and
argument of counsel retire under charge
of a sworn officer of this court to consider
of their verdict & subsequently return into
court for a verdict upon their oaths
say we the jury find the defendant

Guilty & assess the fine at twenty five dollars. Thereupon the plaintiffs moves the court for a new trial.

And afterwards to wit on the 26th day of May A.D. 1886 the same being one of the days of said Term of said Court, the following among other proceedings were had to wit:

The President & Trustees }
of the town of St Nicholas }
vs }
Peter Crowley } appeal

This day comes onto
be heard the plaintiffs motion for a
new trial heretofore entered herein,
after argument of counsel the court
being fully advised overrules said
motion. To which ruling the plaintiffs
except. It is therefore considered by the
Court that the Plaintiffs have & recover
from the defendant the sum of Twenty
five dollars fine and that they have
execution therefor & on motion of defendant
it is ordered by the Court that each party
pay their own costs. To which ruling of
the court the Plaintiff accepts & prays an appeal
to the Supreme Court, which is allowed on
condition that they enter into bonds in sum

of \$100, with security to be approved by the court
State of Illinois } Kane County Circuit Court
Kane County ss } May Term 40 1856
The President & Trustees

of the town of St Charles } Appeal from

123 } A. B. M. Wayne
Peter Moiley }

Justice of the Peace

And now come on to be

heard the above entitled cause the
plaintiffs appearing by their counsel S. C.

Eastman and the defendant by his
counsel Messrs Ferguson Post & Huntington

The cause being an action of debt for
the violation of an ordinance in relation
to the sale of intoxicating drinks. The plaintiffs
first offered in evidence the records, pur-
porting to be the records of the corporation of
the town of St Charles, J. M. Ferguson was
then called by the Pltffs as a witness and
testified that the books offered in evidence
was the records of the corporation of the town
of St Charles. Whereas then on part of defense
tried to certify of posting copies of the
ordinances on which this suit was predicated
& which is hereafter set out in full, and stated
that the words ("of the most") were inserted since
the commencement of this suit, by A. B. M. Wayne
former clerk of the corporation, at time certified

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, [Little page]

" Town of St Charles Books of Records "

" St Charles June 15th 1854. Board of Trustees

" met pursuant to a call of the President, J. J.

" Durant Jas S Randall George G Stevens & W

" Bowman and W. F. Asgwood, after being called

" to order by the President, on motion of W. F. Bowman

" the following ordinance was passed,

" An ordinance relating to spirituous vinous

" mixed fermented and intoxicating liquors

" Sec 1. Be it ordained by the President and Trustees of the
" town of St 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
" ware merchandise property chose in action
" or upon any promise contract or agreement
" expressed or implied, except as hereinafter pro-
" vided, deliver or furnish or cause to be delivered
" or furnished or knowingly offer to be taken or
" received, any spirituous, vinous, fermented
" mixed or intoxicating liquors, shall be considered
" 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 offender,
" Here follow sects 3, 4, 5, 6, 7 of ordinances on same
" subject. J. J. Durout Pres.

" of the Board of Trustees
" ordered that the clerk be required to post prin-
" ted copies of the 2 last aforementioned ordi-
" nances or have the same published according
" to law in some newspaper published in town
" Board adjourned without day. Attest, A. B. M. Wozner
" clerk.

" I hereby certify that on the 24th day of June
" 1854 I caused printed copies of the ordinances
" passed by the President and Trustees of the
" town of St Charles on the 16th 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. B. M. Wozner clerk

Pltffs, next called P. J. Comptons who testified
as follows, I know the defendants, Peter Cunnely
he does business in the town of St Charles in this
County, he sold me two drinks of brandy at his grocery
on the 29th day of November
last, at two different times, I paid him for the
same, he also sold a pint of whiskey on the same
day to Ransom Cunnely (X & / Cross examined

I reside at Batavia, I went to St Charles for the purpose of buying liquor, that the defendant might be prosecuted. I drank twice, on that evening at defendants, went to several other groceries and saloons on some 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 Plff - objection sustained] Are you not a member of an organization or body of men at Batavia called the anger or brier society? [Objected to by Plff - objection sustained] Are you not a member of a society who are pledged to destroy the property of liquor sellers? [Objected to by Plff - objection sustained] Did you go to St Charles to buy liquor of the defendant at the suggestion or request of an organized band or society of men at Batavia or by a resolution of such a band? Answer, Well I hardly know whether I can answer the question, there was no resolution passed, others knew that I was going, it was spoken of by others, I expected to have my expenses paid. [Question] State whether you are a member of a society sworn to prosecute liquor sellers and to destroy their property. [Objected to by Plffs counsel - objection sustained] Can't you as any one offered to defray my expenses, had some expectation that they would be paid. I paid for the

town & Lujins: no one furnished me any money.

[Main resumed]

Was this money you spoke of in the corporation
minutes of St Charles, Council for defendant
admit such to be the fact

Ransom Conoley sworn, He now defendant,
keeps a grocery in St Charles. I know of his
selling intoxicating liquors. he sold a pint
to me on the 29th of November last at his
grocery in St Charles, I know of his selling liquor
on two other occasions the same evening. he
sold two drinks of brandy to P. S. Comstock on two
different occasions the same evening at his
grocery [X & J News Examined]

I live at Botavia, went up to St Charles to buy
this liquor that defendant might be prosecuted
I went to several other places the same evening
I left the bottle of liquor I purchased at Coes.
it was whiskey that I bought. I paid my own
money for it, no one promised to pay my expenses
I went up with Comstock, I expected perhaps I should
get the money back I paid out. State whether or
not you went to St Charles at the request of an
organized society at Botavia! Ah! 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 sure of, I
went with Comstock. do you not belong to an orga-
nized body at Botavia called the Anger society?

[objected to by ptiffs counsel - objection sustained] Are
you not a member of an organization or society of
men sworn to destroy liquor sellers and to destroy
their property, [objected to - objection sustained] How
many times did you drink liquor on that evening,
Ans. five or six times. I did take pretty good swigs,
James Rodges sworn; I know defendant he keeps
a grocery in Little Charles over the night in question
[27th of November] I went up to Little Charles and bought
a pint of whiskey and paid debt for it;

[X &]

I live at Geneva; went to Little Charles for the purpose
of purchasing liquor of the defendant that he might be
prosecuted [Quest] Do you belong to a body of men
who are banded together and swear to prosecute liquor
sellers, [objected to - objection sustained] [Question] Did you
not go to Little Charles in pursuance of a resolution of an
organized body or society of men at Batavia or elsewhere
Ans. I did not, [Quest] 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 Church Sworn, I was the corporation clerk
of the town of Little Charles There, referring to the book
of records, offered in evidence are the records of
the corporation of the town of Little Charles, these ordi-
nances and certificate of publication upon
which suit is brought, are in the hand writing of
A. R. W. Wayne, he was at date of said ordinances the
clerk of said corporation — — —

A. R. McWayne sworn; I know defendant, reside
at St Charles. [Rec'd counsel] gone book of records
purporting to be the records of the corporation of the
town of St Charles, to witness: [By Rec'd counsel]
Please to state whether or not there are the records
of the corporation of the town of St Charles. Ans: They are,
Please turn to the ordinance passed by the President
and trustees of the town of St Charles June 18th 1854
and the certificate of posting such ordinances in
relation to the sale of intoxicating drinks, and
state whose hands writing they are in, Witness
opened book to ordinance and certificates examined
them, answered: They are in my hands writing,
I was corporation clerk at the time, state whether
you caused such copies of those ordinances
to be made? Ans: By Witness 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 the River, ~~one~~
~~in my office~~ in St Charles, one on post in the mill
on the East side of the river, I posted two or three copies
on the bridge across the River, one in my office and
one at the Post office, others in different parts of the
town. They were posted on the 24th 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 ordinances & certificates above
set out. The above was all the testimony in the case,

The Plaintiff asked the following instructions
numbered 1-2-3-4, to the jury — — —

pt
Gentry
3d
Gentry
That the books purporting to be the records of the
corporation of the town of St Charles are proper
evidences in this case of all matters therein
contained,

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
- West side of the river in said town and at the
Post Office, such is proper evidence on the question
of posting notices

Lost

3d
4th
Gentry
That the minutes and entries made by
A. B. W. Wayne while in the proper discharge of his
office as clerk of the corporation of the said town
of St Charles, in the proper books of records of said
corporation are admissible 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 deff by their counsel then - then excepted,

Defendants Instructions

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 and all presumptions are in favor of the defendant,

2^d

That unless the plaintiff has proved that the ordinance declared on was properly published and in the manner prescribed by the statute the defendant is entitled to judgment -

3^d

That proof that copies of the ordinances were posted is not sufficient the plaintiff must prove that such copies were printed copies and the burden of proof is upon the plaintiff 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 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 & 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 ~~proof of general~~ 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 detected by the proof shows them unworthy of credit -

The court then of its own volition gave the following instructions in writing.

[Instructions by the Court]

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 alleged 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 & that it ought

not to control their conduct, they are at liberty
to disregard it, The law has ever looked with
disfavor upon infamers and spies, and
while the fact that a witness may have acted
in that character does not under the law abso-
lutely 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
scentinize 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 pre-
concerted plan formed by themselves in connection
with others to entrap the defendant into the com-
mission of an offence in order to prosecute
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

circumstances of the case: but the motives
of the witnesses you have nothing to do, any
further than it affects their creditability, however
ill-judged and wholly inadmissible 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 evidence is to
be given to the several witnesses who have been
sworn in the case;

To the giving of which instructions so given
the juries by their counsel then and then accepted,

Isaac G. Wilson *Pres.*

Know all men by these presents that we
the President and Trustees of the town of
St Charles as Principals and Rella French
as surety are held and jointly bound unto
Peter Clevolly in the sum of one hundred
dollars to which sum well and truly to be made
we bind ourselves successive heirs and assigns
jointly by these presents The condition of this
obligation is such that whereas The President
and Trustees of the town of St Charles lately
recovered a judgment vs Peter Clevolly for
the sum of twenty five dollars damages in the
Honne County Circuit Court from which judg-
ment they have prayed an appeal to the
supreme court Now if the said President and
Trustees of the town of St Charles shall pay or
cause to be paid all costs interest and
damages in case the said judgment shall be
affirmed and also duly prosecute their said
appeal then the above obligation to be
void otherwise to be and remain in full
force and effect Witness our hands and
the seal of said corporation this 29th day of
May 1856.

J. J. Duront *President of the*
Rella French *Trustee of the town of St Charles*

affirmed }
J. G. W. }

State of Illinois I Paul, R.
of the same County as I Wright Clerk
of the same County
Circuit Court in and for said County
and State aforesaid do hereby certify
that the above and foregoing are
true full perfect and complete copies
of the transcript from the Justice of the Peace
summons issued from the Clerk's office
of the same County Circuit Court, Bill of
Exceptions, orders of court and appeal
Bonds, on file in my office in the
above entitled cause

Witness Paul R. Wright
Clerk ^{of said Court} and the seal thereof
at Geneva this 14th day of
March 28 1857

P. R. Wright
Clerk

The President and Justices
of the town of St Charles

as } Appellant from the
Peter C. Marley } Cause to Circuit
Court -

And now comes the said plaintiffs
by Cushman their attorney and assigns
the following errors in the above entitled
cause -

- 1st " Verdict of the jury was against the
evidence
- 2^d " The court admitted improper evidence,
- 3^d " The court excluded proper evidence
- 4th " The court erred in not allowing the
plaintiffs a new trial,
- 5th " The court erred in giving to the jury
as the law in the case, each & every
instruction asked by the defendant -
& especially in giving the 1st 5th & 6th
instructions -
- 6th " The court erred in giving an
instruction of his own volition &
in stating the facts in such in-
struction with the law & also in
giving bad law in the case

J. L. Cushman

Att for Plff

And the defendant says there is
no error in it & says prof^r to
Fairbairn & Knapp

The President and
Directors of the

Peter Company

errors assigned

Filed April 21, 1857
Leland
Clerk

80
The President & Justices
Court of St Charles
in

Peter C. Mauley

Filed March 19. 1882

L. Leland
Clk.

Record

United States of America:

STATE OF ILLINOIS, }
KANE COUNTY, SS. }

Page 1.

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.

3. 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.
PETER O'MAILEY. } APPEAL.

5. 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.

7. 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.

8. "Sec. 1. Be it ordained by the President and Trustees of the town of St. 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 defendant, 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.

11. 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.

13. 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

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.

14.

PLAINTIFF'S INSTRUCTIONS.

Given. 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* contained.

Given. 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. 3rd.—*Lost.*

Given. 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.

15. 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.

Given. 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, 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

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 inadmissible 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 approved 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.

80
The President & Trustees
of the Town of St Charles

vs
Peter O. Morley

Filed Apr 21st 1857

L. Leclerc
Clerk

Just a fine and clear
and then and there executed
To the giving of which instructions no given the plaintiffs by their coun-
is to be given to the several witnesses who have been sworn in the case
It is for your Gentlemen under all the circumstances to say what evidence

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,

TO THE SHERIFF OF THE COUNTY OF

St. Clair

GREETING:

BECAUSE, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of *Kane* county, before the Judge thereof, between *The President and Trustees of the town of St. Charles* plaintiffs and *Peter O Mailey*

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

Plaintiffs

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; THEREFORE, WE COMMAND YOU, that by good and lawful men of your county, you give notice to the said *Peter O Mailey*

that *he* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the ~~Monday~~ ^{first Tuesday after the third} *Monday* in *April* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Peter O Mailey*

notice, together with this writ.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof at Ottawa, this *19th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-Seven.

L. Leland
Clerk of the Supreme Court.
By J. B. Rice Deputy

Served the within summons by reading
to the within named Peter O'Malley the same
the 20th day of March 1857

George E. Conner
Sheriff of Kane
County
By H. C. Clark
deputy

Service .50
60 miles - 1.60
Folio .10
Total 2.20

Pres. & Trustees of the
Town of St. Charles
by
Peter O'Malley
Seize facias

Filed April 21. 1857
Belmont
Belmont



STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,
TO THE CLERK OF THE CIRCUIT COURT FOR THE COUNTY OF *Kane* 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 *Kane* County, before the Judge thereof, between *The President and Trustees of the town of St. Charles*

plaintiffs and *Peter O'Malley*

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

Plaintiffs as we are informed by *their* 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 *third Tuesday in April* 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.

WITNESS, The Hon. WALTER B. SCATES, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *19th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*six*

L. Leland
Clerk of the Supreme Court.

By J. B. Rice Deputy

The Treas & Trustees of SA Charles
vs
Peter O Mailey
Writ of Error

Filed March 17, 1857
L. Leland
Clerk

The President & Justices of the
town of St Charles } Supreme Court
res } Ottawa June Term
Peter McMailey } A.D. 1856

This suit was originally commenced
before A.B. McKague Esq, a magistrate, for the
violation of an ordinance passed June 15th 1856
by the President & Justices of the town of St Charles in
relation to the sale of intoxicating drinks -
cause was tried Dec 12th 1855 - and judgment
was given for \$100 & costs - appeal taken to Hon
Circuit Court - tried by jury May 21st
1856, verdict for Pliffs for \$25 - and costs
were appraised by the court -

This is an action of debt for violation of a
town ordinance passed by virtue of a charter
found on page 232 of the Laws of 1853,
The 22^d Article of which which Charter, of its 7th
section provides, That the President & Justices -
shall have power to suppress and prohibit "the
selling, harboring, exchanging and traffic of wines, gin
" rum, brandy, whiskey or other intoxicating drinks
within the limits of said town."
sect 10 provides, that any fine, penalty or forfeiture
incurred under this act or any by-law or ordinance
made in pursuance of this act - a fine or act that may
be passed amendatory to this act - may be recovered
together with costs before any Justice of the Peace or
the corporate house and the first process shall be
a summons - and shall be lawful
to deliver generally in test. stating the clause
of the act - a ordinance under which the same

the same is ordained, - The act is deemed
a public act -

sect 7 provides that said President, Justices
shall require their clerks and it shall be
his duty, to make and keep a full and
faithful record of all their proceedings by-
laws and ordinances, and of the time, manner
and place of publication of such by-laws in a
book, to be provided for that purpose and such
book purporting to be the records of the corporation
of the town of St. Charles shall be received in all
courts without further proof as evidence of
all matters therein contained.

And all ordinances before taking effect shall
be published in ~~said town~~ at least ten days in
a newspaper published in said town or by
posting up printed copies of the same in at
least three of the most public places in the town.

The first point we make is the verdict goes
against the evidence -

P. J. Comstock swears - Sept - sold him, two
drinks, of Brandy, at two different times,
on 29th of Nov. 1855 - and one part of whiskey
on same day to Couly, -

Reuben Couly swears, Sept sold him a part of
whiskey - and that he sold two drinks of
Brandy, on two different occasions, 29th of
Nov. 1855 - to P. J. Comstock -

J. Hadley swears, he bought one part of whiskey,
Sept the 27th of Nov. 1855 - making four
different sales, at four different times, of
intoxicating drinks by Sept - in violation of the
said 2^d section of said ordinance - which

provides, "Any person who shall sell, barter or
" exchange any spirituous liquors, fermented
" mixed or intoxicating liquors, within the corporate
" limits of said town - upon conviction thereof
" shall forfeit and pay to said President and Trustees
" the sum of twenty five dollars, for each and
" every offence -

Now on four distinct and positive offences
distinctly and positively proven - by corroborative
testimony - unimpeached and unimpeachable,
except so far as the court of its own volition
sought for this occasion to "sit down" upon the
witnesses by way of a "speech" to the jury, under
the guise of instructions from the "bench".

I say sit down may it please your Honours. for there
is not one word of testimony that tends to show,
that these witnesses were not truthful - reliable
and candid men, and no man dares
(or could be brought) to say that they were not
above every reproach and shadow of suspicion, and
the too presumes (as these witnesses have once
before testified before the magistrate to the same
facts) that as no attempt was made to impeach
their general character, that it stood above every
suspicion (as they do in fact) may it please
your Honours. The only excuse for this most
"singular sitting" of this most peculiar court
being, that these witnesses most freely said
they went to this society to purchase the
liquor in question that, except might be
prosecuted - Had they not this right, your
Honours? They made no "swears" they took no
means to "entrap" they conceived not their
purpose, your Honours, but indignant as they

had a right to be, when their fathers, brothers,
children - friends - saw men better - criminals
poor - idiots - lunatics - and consigned to an
early death by the infamous acts of this
defendant - they cowardly went & purchased of
this scoundrel - themselves this liquor - that his conviction
might be sure, that he might be made to
feel, only when such men can feel in his
pockets, the weight of his crime, and for
this grave - they are to be set upon
by some men - in the spotless robes of Justice,
when a jury of the country are selected
the tribunal - yet these men for no other
crime - trust he this assessor to be ridden by
such a court before such a jury that
Justice and morality may be defended.

The verdict is possibly against the evidence
and at first blush must strike every mind
unprejudiced, as being against the weight
of the evidence, and as this court has
repeatedly decided, in such a case - must
be reversed.

The Law as given by the Court in the
5th instruction asked by def - is erroneous,
That the certificate of the publication and
posting of the ordinances contained in the
book of records, of said town of H. Charles, is no
evidence whenever of the publication of said
ordinances and the jury have no right to
consider it -

The statute expressly provides that the books
purporting to be the records ^{of the Corporation} of said town of H. Charles
shall be received in all courts without

Further proof as evidence of all matters therein
contained, which book contains the following
certificate - I hereby certify that on the 26th
day of June 1834, I caused printed copies of the
ordinance passed by the President & Trustees of
the town of St Charles on the 15th day of June
1834, - relating to a spirituous liquor served
fermented and intoxicating, to be posted
in three of the most public places in said town
St Charles June 24th 1834. A. B. W. Wozne clerk,

It was given to the jury as evidence that
subject to said instruction for the simple
reason that it did not specify, the particular
places where such notices were posted.

This instruction is clearly erroneous. It is
most certainly sufficient that the certificate of
the clerk is in the language of the Law.

Suppose this certificate had designated the
identical places where each copy of said
ordinance, as is pointed out by the witness
Wozne - and he should swear they were there
of the "most public places" would it be any
more proof that the notices were posted as is
specified in the Charter - than his certificate
which is in the language of the organic act?

But the instruction says "such certificate
is no evidence whatever of the publication
of said ordinance." The Organic act says the
Books - purporting to be the Books & records of the
corporation of said town of St Charles shall be
received in all courts without further proof
as evidence of all matters therein contained
Now this certificate is a part of said Books & records

and if the charter is to govern is evidence of all matters therein contained - ~~there~~ follow the only conclusion that this instruction was not the Law and though it may be said that the jury must not have been misled by this instruction as they must have found the ordinances duly published, before they could have found for the Pltffs, yet this does not necessarily follow, as compromise verdicts are often made up - in violation of the explicit direction of oaths taken by jurors and it is most evident that in the present case, some such action was had by the jury - else they should have found for the deft or \$100, for the Pltffs - as one or the other should as a necessary sequence follow from the Law & evidence as given in the case, and while Courts sometimes may possibly see why a case might not be prejudiced by erroneous Law from the Court - and will not always reverse cases because erroneous Law is given, this cannot fall under such a class of cases, as the verdict cannot be warranted by the Law and the evidence, in any aspect - as neither exact nor substantial justice has not been done in the present case,

The evidence of the witness Whayne is clear & explicit on this point and this Court is asked to refer to the precise words used by the witness, and their reference to the subject then before the witness, the position of the defendant & the witness and but one conclusion can be had therefrom

The third point made is the voluntary and enormous love given by the Court of its own motion -

1st It is not the law as applicable to this case,

2^d The instruction is a stump speech from the Court, of both law & fact,

The language of the Court is
"The law has ever looked
with disfavor on informers & spies, &c"

This is not the law, all the elementary writers have favored this class of testimony and the law in all modern ages has so far encouraged this class of testimony as to absolve them from actual crime - at common law and penalties have often been given previously imposed by statutes of different states, to encourage persons who are conversant with criminals to come forward and declare such knowledge that the laws may be vindicated and the community or people protected,

Reveries, Brim Ex 8193
1 Green Ex 412 - 415 -

With the motives of the witnesses you have nothing to do any further than it affects their credibility, however ill judged and wholly inadmissible you may regard, as the Court certainly does regard efforts and means for the

