

No. 12633

Supreme Court of Illinois

Pendergast.

vs.

City of Peru.

71641  7

190-166

Richard J. J. J.
City of New York

190

1858

X

Prepared

12633

1.
State of Illinois } Ophas before the Honorable Madison
Sasale County } B. E. Hollister Judge of the Circuit
Judicial district of the State of Illinois
and the presiding judge of the Sasale County Circuit
Court at a special term of said Court commenced
and held at the Court House in Ottawa in said
County on the second Monday in February the term
being the ninth day of February in the year of our
Lord one thousand eight hundred and fifty seven
and of the Independence of the United States of
America the eighty first.

Present

The Honorable Madison E. Hollister Presiding Judge
John H. Mack Clerk
Washington Bushnell State Attorney
Eric S. Waterman Sheriff

It is remembered that on the 31st day of January
1837 an appeal bond was filed in the office of the
Clerk of the Circuit Court in the words and figures
following to wit:

"From all men of these presents that
on Richard Pendergash and John Johnson an bond and
firmly bound unto the City of Peun in the penal sum
of Ten hundred and sixteen & five dollars lawful money
of the United States for the payment of which said and
only to be made on and under our heirs and
administrators jointly severally and firmly of these
presents. Witness our hands and seals this 20th
day of January 1837

The condition of the above obligation is such
that whereas the said City of Peun did on the 31st day
of December 1836 before John P. Thompson a justice
magistrate of the City of Peun in said County of
Sasale render a judgment against the above named
Richard Pendergash for the sum of one hundred and

eight dollars and two cents from which judgment
the said Richard Pendergast takes an appeal to
the Circuit Court of the County of Dallas and State
of Illinois. Now if the said Richard Pendergast
shall prosecute his appeal with effect and shall
pay whatever judgment may be rendered by the Court
upon dismissal or trial of said appeal then the
above obligation to be void otherwise to remain in
full force and effect. Richard Pendergast *RP*
Approved and at this John Johnson *JD*
20th day of Jan'y 1857.

And afterwards to wit: on the same 30th day of
January 1857 a transcript from the Court
above was filed in said Clerk's office in the
words and figures following to wit:

"City of Peoria 21 Bond filed for costs Dec 5th 56
1856 December 5th Summons
Richard Pendergast vs Wm. C. Fort, Marshal, etc.
on the 10th instant at 2 o'clock pm
to answer under the City of Peoria in a plea of debt for
a violation of an ordinance entitled an ordinance
for regulating barbers, grocers, ordinaries, eating
houses and for the sale of intoxicating liquors to them
damages one hundred dollars \$100.00 - December
6th 1856 Summons of reading to the within named
defendants of Wm. C. Fort Marshal fees 60 cents
December 10th 56 at 3 o'clock P. M. this suit is contin-
ued until the 13th instant at 2 o'clock P. M. - Dec 13th
13th instant at 3 o'clock P. M. defendant asked this
cause to be continued until the 16th instant at 2
o'clock P. M. which is granted by the Court. Dec.
the 16th instant at 2 o'clock pm defendant asked
this case to be continued until the 19th instant
at 2 o'clock P. M. - December 19th instant 56
the justice magistrate being sick and unable to

Attend this cause is continued until the 26th instant at 2 o'clock P.M. Dec the 26th 56 at 2 o'clock P.M. defendant appeared and asked this case to be continued until 1 o'clock this afternoon which is granted - at 1 o'clock this afternoon defendant asked this case to be continued until Dec the 31st instant which is granted. Dec the 31st 56 defendant appeared and plead guilty to the charge of violating said city ordinance as charged.

It is therefore considered that the plaintiff has and receives of the defendant the sum of one hundred dollars debt for violating said city ordinance and also the sum of eight & 50 cents costs and that execution issue therefor. Given the 20th 1857
appealed and filed for an appeal to the Circuit Court. Here \$144.⁰⁰ Costs \$8.85

Policie magistrates fees - Docket entry 25. Summons 50. filing bond 25. 5 continuances 1.25 Copying case 50. entering judg 25. entering appeal 25 - 3.25 - City attorney fees 5.00 - 8.25 - Sheriffs fees. Serving return sum 40. \$8.85 - Defendant paid for bond, transcript & papers 1.25

State of Illinois. I the undersigned a police magistrate
Asaella County of said city in said County do
Certify that the above is a full and
correct copy of the proceedings and judgment from
my docket in the above entitled case. Given
Thompson police magistrate - Dated this 20th day
of Jan^y 1857

And afterwards to wit: on the
samer 30th day of January 1857 and after the
filing of said bond and transcript a summons
was issued out of and under the seal of said Court
in the words and figures following to wit:

State of Illinois. The People of the State of Illinois
Sadelle Sheriff 3^d to the Sheriff of said County
Greetings;

We command you to
Summon the city of Peun if to be formed in your
County personally to be and appear before the Circuit
Court of said County on the first day of the next term
thereof to be holden at the Court house in Ottawa in the
9th day of February next to prosecute their suit which
they instituted against Richard Undergash and
recovered judgment before J. P. Thompson a justice
magistrate for the city of Peun in said County on
the 30th day of December 1836 for the sum of \$100.00
which debt from which said judgment said Undergash
has taken an appeal to the Circuit Court of said County
and further to do and perform whatever said Court
may then and there consider in the premises. And
show you then and there this writ - Witness John H
Stark Clerk of said Court and the Seal of said
Court at Ottawa this 30th day of January
A.D. 1837 J. H. Stark Clerk

Said Summons was returned filed in said
Clerk's office on the 6th day of February 1837 with
the following endorsement thereon

"Read the within
Summons to John L. McCormick a true member of
the city of Peun July 3^d 1837 Geo L. Waterman Clk.
By A. E. Green Deputy."

On Monday February 9th 1837 the same being
one of the days of the February Special term of said
Court for the year 1837 an order was made and
entered of record in said cause in the words and
figures following to wit:

5
"City of New York" 3
"Appeal"
Richard Pendergast 3 The plaintiff comes by
Charles Blanchard who moves
the Court to dismiss the appeal herein.

On Friday February 13th 1857 the Court being
one of the days of the February term of said Court for
said year another order was entered of record in
said cause in words and figures following viz:

"City of New York" 3
"Appeal"
Richard Pendergast 3 It is ordered by the Court that
the motion to dismiss the appeal
herein be overruled."

This case was continued at June
term 1857.

On Thursday November 5th 1857 the Court being
one of the days of the November term of said Court for
the year 1857 the following further order was entered
of record in said cause viz:

"City of New York" 3
"Appeal"
Richard Pendergast 3 This day the plaintiff moves the
Court to dismiss this appeal
which motion is sustained by the Court.

It is therefore considered by the Court that the appeal
herein be dismissed and that a writ of habeas corpus be
the magistrate from whose decision this appeal was
taken or to his successor in office, and also that
the plaintiff stand and receive of the defendant his
costs and charges herein herein expended and that
he have execution therefor.

6.

The defendant J. L. Hough his attorney excepts to the opinion of the Court in dismissing said appeal, and prays an appeal to the Supreme Court which is granted.

And afterwards, to wit on Saturday November 7th 1837 the same being one of the days of the said November term of said Court for said year the following further order was entered & recorded in said cause to wit

"Let of Penn
Richard Pendegast Appeal
It is ordered of the Court,
that the default heretofore
entered in this cause be set aside."

And afterwards to wit on Monday November
30th 1837 the same being one of the days of the said
November Term of said Court for said year the
following final order was entered of record in said
cause to wit:

"City of Peru
vs
Richard Pendergast

3 Appeal

This day the plaintiff comes
by T. P. Kalligan their attorney
and the defendant by D. S. Hough his attorney, and by
agreement of parties a jury is waived and this cause
submitted to the Court for trial, and after hearing
the testimony and arguments of counsel the Court
find the issues for the plaintiff and assess their
damages at one hundred dollars.

Defendants Attorney moves the Court for a writ that which motion is overruled by the Court.

It is therefore considered by the Court that the
plaintiffs bear and receive of the defendant, the said

Sum of one hundred dollars for their damages and their costs and charges by them herein expended as well as in the Court below, and that they have execution therefor.

Defendants cannot now pray an appeal herein to the Supreme Court, which is granted upon condition that the defendants within thirty days from this date file with the Clerk of this Court an appeal bond payable to the plaintiffs in the penal sum of one hundred dollars with good security.

On the 2^d day of December 1837 the defendants attorney filed with the Clerk of this Court his bill of exceptions in the words and figures following, that is to say:

City of Peun

Richard Pendergast

Appeal - LaSalle County
Circuit Court November
Term A.D. 1837.

It is remembered that on the trial of this cause at the November Term A.D. 1837 of the said LaSalle County Circuit Court, the said City of Peun to maintain the issue on its part gave in evidence to the Court both plaintiff and defendant having received a copy a certified copy of an ordinance of the City of Peun, having first found that the same had been published in a newspaper published in said City of Peun as required by the charter of said City, which said certified copy was in the words and figures following to wit:

An ordinance providing for licensing and regulating taverns, ordinaries, eating houses, and the sale of intoxicating liquors:

"Be it ordained by the City Council of the City of Peru.
 Sec 1st That it shall not be lawful for any person or persons to keep tavern, ordinary, or eating house in the City of Peru without first having obtained a license from the City Council thereof for that purpose, as hereinafter mentioned, under a penalty of not less than twenty five dollars, nor more than one hundred dollars for each and every days violation thereof.

Sec 2^d That it shall not be lawful for any person or persons to sell, barter or exchange, any wine, brandy, rum, gin, whiskey, beer, ale, porter, or other vinous, spirituous, malt or fermented liquors, or any mixture, part of which is spirituous or fermented liquors without being duly licensed to keep a grocery, for the selling of wine, brandy, rum, gin, whiskey, beer, ale, porter, or other vinous, spirituous malt or fermented liquors and upon a violation of this section the person or persons so offending shall forfeit and pay for each offence a sum not less than twenty five dollars nor more than one hundred dollars and cost of suit.

Sec 3. That the City Council of the City of Peru may at their discretion grant a license to any person or persons to keep a tavern in said City upon the application of such persons in writing setting forth the house or place proposed to be occupied as such tavern, and producing to said Council the Treasurers receipt for the sum of One Hundred and fifty dollars for taverns under the bluff and one hundred dollars for taverns in the bluff and entering into bond to the City of Peru in the sum of two hundred dollars, liquidated damages with two good securities, who shall be freeholders in said City, to the value of double the amount of said bond conditioned to observe all laws and ordinances

9.
Sec 4. now in force or that may hereafter be in force, for the regulating and governing of taverns in said City. That the City Council may grant a license to retail wine, brandy, rum, gin, whiskey, beer, ale, porter, or other vinous, Spirituous, malt or fermented liquors in any quantity less than one quart to any person or persons who may apply therefor upon the applicant, or applicants filing a petition in writing setting forth the particular building or place intended to be occupied by him or them for that purpose, and producing to the said Council the Treasurers receipt for One Hundred and fifty dollars for a quarry under the bluff, and one hundred dollars for a quarry on the bluff, and entering into a bond to the City of Peru in the sum of _____ dollars liquidated damages, conditioned to observe all ordinances and laws now in force or that may be in force regulating the retailing of Spirituous liquors.

Sec 5. That the City Council may grant a license for the purpose of selling at wholesale, wine, brandy, rum, gin, whiskey, beer, ale, porter, or other vinous, Spirituous, malt or fermented liquors, in any quantity not less than one quart to any person or persons who may apply therefor upon the applicant or applicants filing a petition in writing setting forth the particular building or place intended to be occupied by him or them for that purpose, and producing to said Council the Treasurers receipt for the sum of one hundred dollars, and entering in bond in the same manner as prescribed in Sec 4, any person or persons holding a license under this Section, who shall sell, barter or exchange any of the above named liquors in a less quantity than one quart, shall be subject to the penalty contained in Sec 1st hereof.
Sec 6. Every license granted under this ordinance shall be signed by the Mayor and attested by

the Clerk of the City Council and shall have the seal of the City affixed thereto. It shall be granted for the term of not less than Six months nor more than twelve months. The term of license shall determine upon the 15th day of April in each year all which time new licenses may be granted. The license shall designate the Street, lane or alley and particularly the house or room wherein such licensed person or persons shall exercise his or their employment and shall not authorize the said person or persons to exercise the said employment at any other or different place than that therein described and shall not be assignable or transferable.

Sec 7. If any person or persons having any license under the provisions of this ordinance shall suffer or permit any person or persons to drink to excess or drunkards, or shall permit any person or persons to play at Cards, dice, or any other game of hazard for money or any other valuable thing, or his or their premises, the offender or offenders shall forfeit his or their license and moreover shall forfeit and pay to the City of Peru a fine of not less than five dollars, nor more than twenty dollars for each offence.

Sec 8. If any retailer of wines, brandy, whiskey, rum, gin, beer, ale, porter, or other liquors, spirituous, malt or fermented liquors, shall keep open his or their Shop, store or place of business, on Sunday, or entertain any person or persons therein by selling him, her or them, any of the liquor mentioned in this section, the offender or offenders shall forfeit and pay to the City of Peru a sum not less than twenty five dollars nor more than fifty dollars for each offence, and moreover forfeit his or their license.

- Sec 9 That if any person or persons holding a license under this ordinance, shall Sell, barter or exchange any of the liquors mentioned in Sec 1st of this ordinance to any person or persons under sixteen years of age or shall entice or harbor any such minor or minors, in or about his or their house or premises, he or they shall forfeit and pay to the City of Peru a Sum not less than twenty five dollars, nor more than one hundred dollars, and shall forfeit his or their license.
- Sec 10. That if any person or persons holding a license under this ordinance shall permit any rioting, revelling, drunkenness, lewd or disorderly conduct in his or their house or on his or their premises or shall keep more than one bar or room for the Sale of Spirituous liquors, every such person or persons shall forfeit and pay for every such offence, a Sum not less than ten dollars, nor more than fifty dollars, and forfeit his or their license.
- Sec 11. Whenever a conviction takes place, or is had before the Police Magistrate, or any other court, where under this ordinance the same works a forfeiture, it shall be the duty of such Court to certify the same to the City Council that they may take action thereon.
- Sec 12 That it is hereby made the duty of the City Marshall, and the Town and Police Constables in said City of Peru, to prosecute all violations of this ordinance and in default thereof any person may complain on oath to the Police Magistrate of such violation, and have the offender prosecuted as in other cases.
- Sec 13. That in all cases of conviction under this ordinance the Court or Magistrate shall have the

12. power, and it is hereby made his duty to sentence the offender or offenders to imprisonment in the County jail until fine and costs be paid.

Sec 14 That in all application for licenses under this ordinance it shall be the duty of the City Clerk to decide what building or places are under the bluff and what upon the bluff.

Sec 15- An ordinance entitled "An Ordinance providing for the licensing and regulating of grocers" passed May 9th 1853, and the subsequent amendment thereto are hereby declared to be repealed. And all ordinances in any way conflicting with the provision of this ordinance are hereby repealed, but shall not in anywise release any rights of action received by said ordinance so repealed or which may have occurred under the same, nor in anywise release, or discharge any suits now pending. Passed May 6th 1856 - Published May 8th 1856 in Chronicle

Attest M. C. Hannon ck.

State of Illinois, I John J. Douling City
LaSalle County Clerk, do hereby Certify that
City of Peru the above is a true and
Correct Copy of an ordinance
entitled as above, taken from the Ordinance
Book of the said City now in my possession
and which I hold by virtue of my office
as City Clerk of said City.

In witness whereof I have hereunto
set my hand and the Seal of the
said City this 9th day of November A.D. 1857

John J. Douling, City Clerk

In the introduction in evidence of said certified copy of the said defendant Pendergast's report, which objection was overruled by the Court & said certified copy was read in evidence.

In which decision of the Court in overruling said objection & admitting said certified copy in evidence the said defendant Pendergast then & there excepted.

The said City of Peen also introduced in evidence the testimony of William M. Foth who testified that he was the officer who served the original summons in this case on said defendant Pendergast who stated at the time that the City charged so much for license he (said Pendergast) could not afford to pay.

The said City of Peen also introduced in evidence the testimony of Charles Blanchard who testified that he was present at the trial of said suit before the justice magistrate & that defendant Pendergast pled guilty to a violation of the ordinance.

William M. Foth being recalled by the plaintiff testified that he saw said Pendergast old signs between May 8th & 1856 & the time of the commencement of said suit before the justice magistrate.

No other or further testimony was given or offered in this suit - And thereupon the said Court found the issue in favor of the plaintiff & that the defendant owed to & unjustly obtained from the plaintiff the sum of one hundred dollars.

Whereupon the defendant by D. L. Mough his attorney enters a motion to set aside the aforesaid finding for a new trial because of the said finding being against the law of the case and not warranted by the evidence.

But the Court overruled said motion & gave judgment against the said defendant Pendergast.

In which decision of said Court in overruling

said motion to set aside the aforesaid finding
 & to grant a new trial & rendering a judgment
 against the said defendant, the Court for said
 defendant Pendergast then & there excepted &
 prayed that this bill of exceptions might be signed
 sealed & made a part of the record which is
 done

M. E. McHenry, Clerk
 Judge &c

Defendant filed his appeal bond on the
 16th day of December A.D. 1837 in the words and
 figures following to wit:

"From all men of these
 presents that on Richard Pendergast as principal
 & John Johnson as security an order & firmly bound
 unto the City of Pease in the penal sum of Two
 hundred dollars good & lawful money of the United
 States for the payment of which said and party to be
 made we bind ourselves our heirs Executors & admi-
 nistrators jointly & severally & firmly by these presents.

In witness whereof we have hereunto set our hands
 and seals this 14th day of December A.D. 1837.

The condition of the above Obligation is such that
 whereas the above named City of Pease did at the
 November term of the Circuit Court held in & for the
 County of LaSalle in the State of Illinois A.D.
 eighteen hundred & thirty seven render a judgment
 against the above named Richard Pendergast
 for the sum of one hundred dollars & costs of suit
 to recover which said judgment the said Richard
 Pendergast has taken an appeal to the Supreme
 Court within & for the third Grand Division of
 said State,

Now if the said Richard Pendergast shall
 duly prosecute said appeal & pay or cause to be
 paid all judgments, costs interest & damages
 which the said Supreme Court shall adjudge against

the said Richard Pendergast, abide the order
& judgment of said Supreme Court in this behalf
then this Writ is to be void, otherwise to
remain in full force & effect.

Richard Pendergast *Quid*
John Johnson *Quid*

State of Illinois of John F. Nash Clerk of the
Said Court of Circuit Court in and for
said County and State do hereby
certify that the within and foregoing comprises a
true, full, perfect and complete record in the
case of The City of Peoria vs Richard Pendergast
as the same appears of record and on file in said
cause in my office.

On Testimony Whereof I have hereunto
set my hand and the seal of said
Court at Ottawa this 7th day of April
AD 1838

J. F. Nash Clerk

Richard Pendergast } State of Illinois
vs } Supreme Court 3^d Division
The City of Peoria } April Term AD 1838

And now comes the said
appellant, by George B. Bascom, his attorney,
& says that in the record, & proceedings, and
renderings of said Court, there is error in
this trial.

1st The Court erred in overruling motion
of defendant below, for a new trial.

2^d The Court erred in overruling motion

of defendant below, in arrest of judgment

3rd The Court erred in rendering judgment for plaintiff below, the same not being warranted by law, & against the evidence

4th The Court erred in rendering judgment in damages against defendant below, this action being in debt =

For these, & other ends appearing on the face of the record, the said appellant prays that the judgment of the Court below therein, may be reversed, annulled & set aside, & wholly for nothing esteemed

Wright & Bacon
Attorneys for appellant

And now comes the said appellee by W. H. L. Wallace its counsel and says that in the record of the proceedings aforesaid there is no such error as the said appellant hath things above assigned and that the prayer may be assigned of by the court. Wherefore appellee prays that said judgment may in all things be affirmed &c
W. H. Wallace
counsel for appellee

Richard Pendergast
190 . 6

City of New
York

File I April 21. 1888
L. L. L. L.
L. L. L.

Recd 5. 11

STATE OF ILLINOIS, SUPREME COURT,

TO APRIL TERM, A. D., 1858.

APPEAL FROM LA SALLE.

RICHARD PENDERGAST, APPELLANT, *vs.* CITY OF PERU, APPELLEE.

Abstract of Record.

This was an action originally brought before the Police Magistrate of the city of Peru by plaintiff below against defendant below, to recover a debt for the violation of an ordinance of said city, and removed, on appeal, to Court below.

1st. Bond on appeal from judgment of Police Magistrate, filed in the office of the Clerk of La Salle County Circuit Court.

2d. Transcript of docket of Police Magistrate of proceedings before him.

3d. Summons issued out of the La Salle County Circuit Court.

4th. Plaintiff moves to dismiss appeal; motion overruled.

5th. Plaintiff again moves the Court to dismiss the appeal, which motion is sustained.

6th. Defendant excepts to opinion of the Court in dismissing appeal, and prays an appeal to the Supreme Court, which is granted.

7th. Default of defendant set aside and cause tried by the Court. Issue found for plaintiff and damages assessed.

8th. Defendant prays an appeal to the Supreme Court, which is granted.

9th. Bill of exceptions as follows:

City of Peru,	} Appeal—La Salle County	
<i>vs.</i>		Circuit Court,
Richard Pendergast.		November Term. A. D., 1857.

Be it remembered that on the trial of this cause at the November Term, A. D., 1857, of the said La Salle County Circuit Court, the said City of Peru, to maintain the issue on its part, gave in evidence to the Court, both plaintiff and defendant having waived a jury, a certified copy of an ordinance of the City of Peru, having first proved that the same had been published in a newspaper published in said City of Peru, as required by the charter of said city, which said certified copy was in the words and figures following, to wit:

"An ordinance providing for licensing and regulating taverns, ordinaries, eating houses, and the sale of intoxicating liquors:

"Be it ordained by the City Council of the City of Peru,

SEC. 1. That it shall not be lawful for any person or persons to keep tavern, ordinary, or eating house, in the City of Peru, without first having obtained a license from the City Council thereof for that purpose, as hereinafter mentioned, under a penalty of not less than twenty-five dollars, nor more than one hundred dollars for each and every day's violation thereof.

SEC. 2. That it shall not be lawful for any person or persons to sell, barter or exchange, any wine, brandy, rum, gin, whisky, beer, ale, porter, or other vinous, spirituous, malt or fermented liquors, or any mixture, part of which is spirituous or fermented liquors without being duly licensed to keep a grocery, for

Pages 1 and 2.

Pages 2 and 3.

Pages 3, and 4.

Page 5.

Page 5

Page 6.

Pages 6 and 7.

Page 7

Pages 7, 8, 9, 10, 11, 12, 13,
and 14.

the selling of wine, brandy, rum, gin, whisky, beer, ale, porter, or other vinous, spirituous, malt or fermented liquors, and upon a violation of this section the person or persons so offending, shall forfeit and pay for each offence a sum not less than twenty-five dollars, nor more than one hundred dollars and cost of suit.

SEC. 3. That the City Council of the City of Peru may at their discretion grant a license to any person or persons to keep a tavern in said city upon the application of such persons in writing setting forth the house or place proposed to be occupied as such tavern, and producing to said Council the Treasurer's receipt for the sum of one hundred and fifty dollars for taverns under the bluff, and one hundred dollars for taverns on the bluff, and entering into bond to the City of Peru in the sum of two hundred dollars, liquidated damages with two good securities, who shall be free holders in said city to the value of double the amount of said bond, conditioned to observe all laws and ordinances now in force or that may hereafter be in force, for the regulating and governing of taverns in said city.

SEC. 4. That the City Council may grant a license to retail wines, brandy, rum, gin, whisky, beer, ale, porter, or other vinous, spirituous, malt or fermented liquors in any quantity less than one quart to any person or persons who may apply therefor upon the applicant or applicants filing a petition in writing setting forth the particular building or place intended to be occupied by him or them for that purpose, and producing to the said Council the Treasurer's receipt for one hundred and fifty dollars for a grocery under the bluff, and one hundred dollars for a grocery on the bluff, and entering into a bond to the City of Peru in the sum of dollars liquidated damages, conditioned to observe all ordinances and laws now in force, or that may be in force regulating the retailing of spirituous liquors.

SEC. 5. That the City Council may grant a license for the purpose of selling at wholsale, wine, brandy, rum gin, whisky, beer, ale, porter, or other vinous, spirituous, malt or fermented liquors, in any quantity not less than one quart to any person or persons who may apply therefor upon the applicant or applicants filing a petition in writing, setting forth the particular building or place intended to be occupied by him or them for them for that purpose, and producing to said Council the Treasurer's receipt for the sum of one hundred dollars, and entering in bond in the same manner as proscribed in Sec. 4. Any person or persons holding a license under this section who shall sell, barter or exchange any of the above named liquors in a less quantity than one quart, shall be subject to the penalty contained in Sec. 1st. hereof.

SEC. 6. Every license granted under this ordinance shall be signed by the Mayor, and attested by the Clerk of the City Council, and shall have the seal of the city affixed thereto. It shall be granted for the term of not less than six months, nor more than twelve months. The term of license shall determine upon the 15th day of April in each year, at which time new licenses may be granted. The license shall designate the street, lane or alley and particular the house or room wherein such licensed person or persons shall exercise his or their employment and shall not authorize the said person or persons to exercise the said employment at any other or different place than

that therein described, and shall not be assignable or transferable.

SEC. 7. If any person or persons having any license under the provisions of this ordinance, shall suffer or permit any person or persons to drink to excess or drunkenness, or shall permit any person or persons to play at cards, dice, or any other game of hazzard for money or any other valuable thing, on his or their premises, the offender or offenders shall forfeit his or their license, and moreover, shall forfeit and pay to the City of Peru a fine of not less than five dollars, nor more than twenty dollars for each offence.

SEC. 8. If any retailer of wines, brandy, whisky, rum, gin, beer, ale, porter, or other vinous, spirituous, malt or fermented liquors, shall keep open his or their shop, store or place of business, on Sunday, or entertain any person or persons therein by selling him, her or them, any of the liquor mentioned in this section, the offender or offenders shall forfeit and pay to the City of Peru a sum not less than twenty-five dollars, nor more than fifty dollars for each offence, and moreover, forfeit his or their license.

SEC. 9. That if any person or persons holding a license under this ordinance, shall sell, barter or exchange any of the liquors mentioned in Sec. 1st. of this ordinance, to any person or persons under sixteen years of age or shall entice or harbor any such minor or minors, in or about his or their house or premises, he or they shall forfeit and pay to the City of Peru a sum not less than twenty-five dollars, nor more than one hundred dollars, and shall forfeit his or their license.

SEC. 10. That if any person or persons holding a license under this ordinance shall permit any rioting, revelling, drunkenness, lewd or disorderly conduct in his or their house, or on his or their premises, or shall keep more than one bar or room for the sale of spirituous liquors, every such person or persons shall forfeit and pay for every such offence a sum not less than ten dollars, nor more than fifty dollars, and forfeit his or their license.

SEC. 11. Whenever a conviction takes place, or is had before the Police Magistrate, or any other court, where under this ordinance the same works a forfeiture, it shall be the duty of such court to certify the same to the City Council that they may take action thereon.

SEC. 12. That it is hereby made the duty of the City Marshal, and the Town and Police Constables, in said City of Peru, to prosecute all violations of this ordinance, and in default thereof any person may complain on oath to the Police Magistrate of such violations, and have the offender presented as in other cases.

SEC. 13. That in all cases of conviction under this ordinance the court or Magistrate shall have the power, and it is hereby made his duty to sentence the offender or offenders to imprisonment in the County jail until fine and costs be paid.

SEC. 14. That in all applications for licenses under this ordinance, it shall be the duty of the City Clerk to decide what buildings or places are under the bluff, and what upon the bluff.

SEC. 15. An ordinance entitled "an ordinance providing for the licensing and regulating of groceries," passed May 9th, 1853, and the subsequent amendments thereto are hereby de-

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Pendergast
vs
The City of Peru

clared to be repealed. And all ordinances in any way conflict-
ing with the provision of this ordinance are hereby repealed,
but shall not in anywise release any rights of action received
by said ordinance so repealed or which may have occurred un-
der the same, nor in anywise release, or discharge any suits now
pending.

Passed May 6th, 1856. Published May 8th, 1856, in *Chronicle*.
Attest, M. C. HARMON, Clerk.

STATE OF ILLINOIS, }
La Salle County, } SS.
CITY OF PERU.

I, John J. Dowling, City Clerk, do hereby certify that the
above is a true and correct copy of an ordinance entitled as
above, taken from the Ordinance Book of the said city, now in
my possession, and which I hold by virtue of my office as City
Clerk of said city.

In witness whereof I have hereunto set my hand
and the seal of the said city this 5 day of November,
A. D., 1857. JOHN J. DOWLING, City Clerk.

To the introduction in evidence of said certified copy the said
defendant, Pendergast, objected, which objection was overruled
by the Court, and said certified copy was read in evidence.

To which decision of the Court in overruling said objection,
and admitting said certified copy in evidence, the said defend-
ant, Pendergast, then and there excepted.

The said City of Peru also introduced in evidence, the testi-
mony of William H. Foote, who testified that he was the officer
who served the original summons in this case of said defendant,
Pendergast, who stated at the time that the city charged so
much for license he (said Pendergast) could not afford to pay.

The said City of Peru also introduced in evidence, the testi-
mony of Charles Blanchard, who testified that he was present
at the trial of said suit before the Police Magistrate, and that
defendant Pendergast plead guilty to a violation of the ordi-
nance.

William H. Foote being recalled by the plaintiff, testified that
he saw said Pendergast sell liquor between May 8th, A. D.,
1856, and the time of the commencement of said suit before the
Police Magistrate.

No other or further testimony was given or offered in this
suit. And thereupon the said Court found the issue in favor of
the plaintiff, and that the defendant owed to and unjustly de-
tained from the plaintiff the sum of one hundred dollars.

Whereupon the defendant by D. L. Hough, his attorney, en-
ters a motion herein, to set aside the aforesaid finding for a new
trial herein by reason of the said finding being against the law
of the case and not warranted by the evidence.

But the Court overruled said motion and gave judgment
against the said defendant, Pendergast.

To which decision of said Court in overruling said motion to
set aside the aforesaid finding, and to grant a new trial and
rendering a judgment against the said defendant, the counsel
for said defendant, Pendergast, then and there excepted, and
prayed that this bill of exceptions may be signed, sealed, and
made a part of the record, which is done.

M. E. HOLLISTER, Judge, &c. } SEAL. }

10th. Appeal Bond.

The errors assigned are:

1st. The Court erred in overruling motion of defendant be-
low for a new trial.

2d. The Court erred in overruling motion of defendant below
in arrest of judgment.

3d. The Court erred in rendering judgment for plaintiff be-
low, the same not being warranted by law and against the evi-
dence.

4th. The Court erred in rendering judgment in damages
against defendant below, the action being in debt.

HOUGH & BASCOM

Attornies for Appellant.

Supreme Court April Term AD 1858

Richard Pendegast
vs
City of Penn

Appeal from Casselle

Points for Appellant

1st The Ordinance, with a violation of which the defendant below, was charged, contains direct prohibitory sections, & various penalties are provided, for different violations. See Copy of Ordinance in Abstract of Record

2^d Before the Police Magistrate was authorized to arrest the defendant in a fine of One Hundred dollars, there must be a distinct admission, on the part of the defendant, of a violation of some section of the Ordinance, which authorized the infliction of so severe a penalty.

3^d The transcript of the Police Magistrate shows that the Defendant appeared and pleaded guilty to the charge of violating said City Ordinance as charged. Now, was he charged. By reference to page 2 of the record, the facts will see that the defendant was charged in general terms with "a violation of an ordinance entitled an ordinance for regulating taverns, groceries, ordonnances, eating houses, and for the sale of intoxicating liquors." Without the examination of a solitary witness, & without any admission

by the defendant that he had been guilty
of violating a law, or twenty, or hundred
dollar provision of the ordinance, the
police magistrate jumped to the conclusion
that the defendant had incurred a penalty
of \$100.00, & rendered judgment against him
for that amount.

The appellant submits that this
cannot be fairly considered a judgment by
confession. In *Campbell vs Randolph*,
13 *Illinois Rep*, 315, this Court has defined
a judgment by confession. "If a party goes
before a justice, & consents that a judgment
may be entered against him for a particular
amount, he is not allowed to prosecute
an appeal from the judgment. He thereby
voluntarily admits that he is ^{guilty} indebted
to the plaintiff to that extent, & the law,
for wise reasons, stops him from afterwards
controversing it."

Squared by this rule, was it the
defendant stopped from carrying his case
into the Circuit Court, by appeal?

4th. If the defendant was rightfully
before the Circuit Court on his appeal, the
case was to be tried *de novo*, & unless
the evidence before the Court warranted
its judgment, that judgment should
be reversed.

The only evidence offered in the
case was the certified copy of the ordinance,
the testimony of the witness Blanchard,
& of the witness Hoot. The witness

Blanchard simply testified that the defendant
plead guilty before the Magistrate, to a
violation of the ordinance.

The witness Hoot testified that
the defendant stated to him, "that the city
charged so much for licences that he could
not afford to pay." - Now consider, that
he did not pay. - It was in the power
of the city to furnish clear & conclusive
proof whether the defendant was licensed
or not. - Such proof was not produced.

The witness Hoot also testified
that he saw the defendant sell liquor
between certain dates. -

What kind of liquor, or where sold,
does not appear. - It may have been
sold beyond the limits of the city, & consequently
without the jurisdiction. -

This was all the evidence in the
case, & the appellant submits that the
such evidence warranted the judgment of
the Circuit Court. -

3rd The action in this case was debt.
No other form of action would lie. - The
Circuit Court rendered judgment in
damages. - See page 7 of the record. -

D. L. Strong
Counsel for Appellant

Brindergate
vs
City of Penn
" "

Points for appellant
" "

D. L. Cough

STATE OF ILLINOIS, SUPREME COURT,

TO APRIL TERM, A. D., 1858.

APPEAL FROM LA SALLE.

RICHARD PENDERGAST, APPELLANT, *vs.* CITY OF PERU, APPELLEE.

Abstract of Record.

This was an action originally brought before the Police Magistrate of the city of Peru by plaintiff below against defendant below, to recover a debt for the violation of an ordinance of said city, and removed, on appeal, to Court below.

1st. Bond on appeal from judgment of Police Magistrate, filed in the office of the Clerk of La Salle County Circuit Court.

2d. Transcript of docket of Police Magistrate of proceedings before him.

3d. Summons issued out of the La Salle County Circuit Court.

4th. Plaintiff moves to dismiss appeal; motion overruled.

5th. Plaintiff again moves the Court to dismiss the appeal, which motion is sustained.

6th. Defendant excepts to opinion of the Court in dismissing appeal, and prays an appeal to the Supreme Court, which is granted.

7th. Default of defendant set aside and cause tried by the Court. Issue found for plaintiff and damages assessed.

8th. Defendant prays an appeal to the Supreme Court, which is granted.

9th. Bill of exceptions as follows:

City of Peru,	} Appeal—La Salle County
<i>vs.</i>	
Richard Pendergast.	} Circuit Court,
	} November Term. A. D., 1857.

Be it remembered that on the trial of this cause at the November Term, A. D., 1857, of the said La Salle County Circuit Court, the said City of Peru, to maintain the issue on its part, gave in evidence to the Court, both plaintiff and defendant having waived a jury, a certified copy of an ordinance of the City of Peru, having first proved that the same had been published in a newspaper published in said City of Peru, as required by the charter of said city, which said certified copy was in the words and figures following, to wit:

"An ordinance providing for licensing and regulating taverns, ordinaries, eating houses, and the sale of intoxicating liquors:

"Be it ordained by the City Council of the City of Peru,

SEC. 1. That it shall not be lawful for any person or persons to keep tavern, ordinary, or eating house, in the City of Peru, without first having obtained a license from the City Council thereof for that purpose, as hereinafter mentioned, under a penalty of not less than twenty-five dollars, nor more than one hundred dollars for each and every day's violation thereof.

SEC. 2. That it shall not be lawful for any person or persons to sell, barter or exchange, any wine, brandy, rum, gin, whisky, beer, ale, porter, or other vinous, spirituous, malt or fermented liquors, or any mixture, part of which is spirituous or fermented liquors without being duly licensed to keep a grocery, for

Pages 1 and 2.

Pages 2 and 3.

Pages 3, and 4.

Page 5.

Page 5

Page 6.

Pages 6 and 7.

Page 7

Pages 7, 8, 9, 10, 11, 12, 13,
and 14.

the selling of wine, brandy, rum, gin, whisky, beer, ale, porter, or other vinous, spirituous, malt or fermented liquors, and upon a violation of this section the person or persons so offending, shall forfeit and pay for each offence a sum not less than twenty-five dollars, nor more than one hundred dollars and cost of suit.

SEC. 3. That the City Council of the City of Peru may at their discretion grant a license to any person or persons to keep a tavern in said city upon the application of such persons in writing setting forth the house or place proposed to be occupied as such tavern, and producing to said Council the Treasurer's receipt for the sum of one hundred and fifty dollars for taverns under the bluff, and one hundred dollars for taverns on the bluff, and entering into bond to the City of Peru in the sum of two hundred dollars, liquidated damages with two good securities, who shall be free holders in said city to the value of double the amount of said bond, conditioned to observe all laws and ordinances now in force or that may hereafter be in force, for the regulating and governing of taverns in said city.

SEC. 4. That the City Council may grant a license to retail wines, brandy, rum, gin, whisky, beer, ale, porter, or other vinous, spirituous, malt or fermented liquors in any quantity less than one quart to any person or persons who may apply therefor upon the applicant or applicants filing a petition in writing setting forth the particular building or place intended to be occupied by him or them for that purpose, and producing to the said Council the Treasurer's receipt for one hundred and fifty dollars for a grocery under the bluff, and one hundred dollars for a grocery on the bluff, and entering into a bond to the City of Peru in the sum of dollars liquidated damages, conditioned to observe all ordinances and laws now in force, or that may be in force regulating the retailing of spirituous liquors.

SEC. 5. That the City Council may grant a license for the purpose of selling at wholsale, wine, brandy, rum gin, whisky, beer, ale, porter, or other vinous, spirituous, malt or fermented liquors, in any quantity not less than one quart to any person or persons who may apply therefor upon the applicant or applicants filing a petition in writing, setting forth the particular building or place intended to be occupied by him or them for them for that purpose, and producing to said Council the Treasurer's receipt for the sum of one hundred dollars, and entering in bond in the same manner as prescribed in Sec. 4. Any person or persons holding a license under this section who shall sell, barter or exchange any of the above named liquors in a less quantity than one quart, shall be subject to the penalty contained in Sec. 1st. hereof.

SEC. 6. Every license granted under this ordinance shall be signed by the Mayor, and attested by the Clerk of the City Council, and shall have the seal of the city affixed thereto. It shall be granted for the term of not less than six months, nor more than twelve months. The term of license shall determine upon the 15th day of April in each year, at which time new licenses may be granted. The license shall designate the street, lane or alley and particular the house or room wherein such licensed person or persons shall exercise his or their employment and shall not authorize the said person or persons to exercise the said employment at any other or different place than

that therein described, and shall not be assignable or transferable.

SEC. 7. If any person or persons having any license under the provisions of this ordinance, shall suffer or permit any person or persons to drink to excess or drunkenness, or shall permit any person or persons to play at cards, dice, or any other game of hazzard for money or any other valuable thing, on his or their premises, the offender or offenders shall forfeit his or their license, and moreover, shall forfeit and pay to the City of Peru a fine of not less than five dollars, nor more than twenty dollars for each offence.

SEC. 8. If any retailer of wines, brandy, whisky, rum, gin, beer, ale, porter, or other vinous, spirituous, malt or fermented liquors, shall keep open his or their shop, store or place of business, on Sunday, or entertain any person or persons therein by selling him, her or them, any of the liquor mentioned in this section, the offender or offenders shall forfeit and pay to the City of Peru a sum not less than twenty-five dollars, nor more than fifty dollars for each offence, and moreover, forfeit his or their license.

SEC. 9. That if any person or persons holding a license under this ordinance, shall sell, barter or exchange any of the liquors mentioned in Sec. 1st. of this ordinance, to any person or persons under sixteen years of age or shall entice or harbor any such minor or minors, in or about his or their house or premises, he or they shall forfeit and pay to the City of Peru a sum not less than twenty-five dollars, nor more than one hundred dollars, and shall forfeit his or their license.

SEC. 10. That if any person or persons holding a license under this ordinance shall permit any rioting, revelling, drunkenness, lewd or disorderly conduct in his or their house, or on his or their premises, or shall keep more than one bar or room for the sale of spirituous liquors, every such person or persons shall forfeit and pay for every such offence a sum not less than ten dollars, nor more than fifty dollars, and forfeit his or their license.

SEC. 11. Whenever a conviction takes place, or is had before the Police Magistrate, or any other court, where under this ordinance the same works a forfeiture, it shall be the duty of such court to certify the same to the City Council that they may take action thereon.

SEC. 12. That it is hereby made the duty of the City Marshal, and the Town and Police Constables, in said City of Peru, to prosecute all violations of this ordinance, and in default thereof any person may complain on oath to the Police Magistrate of such violations, and have the offender presented as in other cases.

SEC. 13. That in all cases of conviction under this ordinance the court or Magistrate shall have the power, and it is hereby made his duty to sentence the offender or offenders to imprisonment in the County jail until fine and costs be paid.

SEC. 14. That in all applications for licenses under this ordinance, it shall be the duty of the City Clerk to decide what buildings or places are under the bluff, and what upon the bluff.

SEC. 15. An ordinance entitled "an ordinance providing for the licensing and regulating of groceries," passed May 9th, 1853, and the subsequent amendments thereto are hereby de-

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clared to be repealed. And all ordinances in any way conflicting with the provision of this ordinance are hereby repealed, but shall not in anywise release any rights of action received by said ordinance so repealed or which may have occurred under the same, nor in anywise release, or discharge any suits now pending.

Passed May 6th, 1856. Published May 8th, 1856, in *Chronicle*.
Attest, M. C. HARMON, Clerk.

STATE OF ILLINOIS, }
La Salle County, } SS.
CITY OF PERU. }

I, John J. Dowling, City Clerk, do hereby certify that the above is a true and correct copy of an ordinance entitled as above, taken from the Ordinance Book of the said city, now in my possession, and which I hold by virtue of my office as City Clerk of said city.

In witness whereof I have hereunto set my hand
and the seal of the said city this 9th day of November,
A. D., 1857. JOHN J. DOWLING, City Clerk.

To the introduction in evidence of said certified copy the said defendant, Pendergast, objected, which objection was overruled by the Court, and said certified copy was read in evidence.

To which decision of the Court in overruling said objection, and admitting said certified copy in evidence, the said defendant, Pendergast, then and there excepted.

The said City of Peru also introduced in evidence, the testimony of William H. Foote, who testified that he was the officer who served the original summons in this case on said defendant, Pendergast, who stated at the time that the city charged so much for license he (said Pendergast) could not afford to pay.

The said City of Peru also introduced in evidence, the testimony of Charles Blanchard, who testified that he was present at the trial of said suit before the Police Magistrate, and that defendant Pendergast plead guilty to a violation of the ordinance.

William H. Foote being recalled by the plaintiff, testified that he saw said Pendergast sell liquor between May 8th, A. D., 1856, and the time of the commencement of said suit before the Police Magistrate.

No other or further testimony was given or offered in this suit. And thereupon the said Court found the issue in favor of the plaintiff, and that the defendant owed to and unjustly detained from the plaintiff the sum of one hundred dollars.

Whereupon the defendant by D. L. Hough, his attorney, enters a motion herein, to set aside the aforesaid finding for a new trial herein by reason of the said finding being against the law of the case and not warranted by the evidence.

But the Court overruled said motion and gave judgment against the said defendant, Pendergast.

To which decision of said Court in overruling said motion to set aside the aforesaid finding, and to grant a new trial and rendering a judgment against the said defendant, the counsel for said defendant, Pendergast, then and there excepted, and prayed that this bill of exceptions may be signed, sealed, and made a part of the record, which is done.

M. E. HOLLISTER, Judge, &c. { SEAL. }

Pages 14 and 15.

10th. Appeal Bond.

The errors assigned are :

1st. The Court erred in overruling motion of defendant below for a new trial.

2d. The Court erred in overruling motion of defendant below in arrest of judgment.

3d. The Court erred in rendering judgment for plaintiff below, the same not being warranted by law and against the evidence.

4th. The Court erred in rendering judgment in damages against defendant below, the action being in debt.

HOUGH & BASCOM

Attornies for Appellant.

Supreme court - April term 1858.

Richard Preadugast,

vs
The city of Peru

} Appeal from Liable.
}

Points & authorities for appellee

This was an action commenced before a police magistrate for a violation of an ordinance of the city of Peru - ~~against selling spirituous liquors~~
The appellant (defendant below) appeared before the police magistrate and "pleaded guilty to the charge of violating said city ordinance as charged."

The appellee insists that this was a judgment by confession, & the defendant below could not appeal therefrom. - ~~See~~
58 R. S. of 1845 p. 323. sec 58.

II The only exceptions taken are to the introduction of the city ordinance in evidence

The ordinance was properly proven by the certificate of the city clerk & corporation side charter of the city of Peru - Private laws of 1st session 1851 - page 120. sec 44 - That law authorizes the ordinances to be proven in the precise manner ~~required~~ in which that proof was made in this case.

III. The motion for a new trial was properly overruled - The evidence of Foote & Blauvelt showed that the defendant below had been guilty of the violation of the ordinance set out in the record -

IV. The objections to this judgment are frivolous and appellee asks the court to dismiss the appeal and award damages for delay -
J. H. Wallace
counsel for appellee

In reply to the suggestions of appellants counsel that this was not a judgment by confession before the justice I would suggest that it appears both from the transcript & the evidence that the defendant "pleaded guilty to the charge of violation of the ordinance" - This we submit ^{is} as much a judgment by confession, as though the defendant had admitted that he owed the city a hundred dollars for a penalty for violation of his ordinance - In case of riot or other crime where the punishment is in the discretion of the court, a plea of guilty subjects the party to the highest penalty prescribed.

so here - the ordinance provides
a penalty of \$100 for its violation
- and a plea of guilty of
a violation of the ordinance
is a virtual admission in
court that the defendant owes
the city \$100.

M. H. McCallan
for appellant.

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Prudogast
^W
City of Peru

Painting for
appetite

W. H. Wallace