

8755

No. _____

Supreme Court of Illinois

A.L.& R.Byers

vs.

President & Trustees, Town
of Olney,

71641  7

At a Term of the Circuit Court begun and held in and for the County of Richland and State of Illinois, the 4th Judicial Circuit in said State on Monday the 19th day of September in the year of our Lord one thousand eight hundred and fifty three before the Honorable Justice Garbar Judge &c when amongst other the following proceedings were had and judgment given & order made and entered of Record &c to wit

The President & Trustees of the Town of Almy
Alexander & Robert Byers Appeal

Copy of Summons issued by Jp
State of Illinois
Richard County The People of the State of Illinois to
The Town Constable of the Town of Almy
Greeting You are hereby commanded to summon A L & R Byers to appear before me at my office on the 7th day of April inst. at 12 o'clock to answer the Complaint of the President & Trustees of the Town of Almy for a failure to pay them a certain debt amounting not exceeding one hundred dollars and hereof make due return as the law directs Given under my hand & seal at Almy this 2nd day of April A D 1853
J. H. Powers Jp
Endorsed, served the within as reading
William Kidd
Town Constable

Copy of the Transcript of Jp
President & Trustees of the Town of Almy
A L & R Byers Summons issued on the 2nd day of April 1853

returnable on the 4th inst. at 12 o'clock all returned
signed Parties appeared on the day of trial Plain-
tiff called a Jury to wit of Hayward H Brant J
Pattiffe & Bank, H Brant & E B Page who after
hearing the testimony returned the following verdict
we the Jury find the dft guilty and assess the fine
at \$5.00 & dft a coadjudge for \$5.00 and Cost
against dft, April the 4th 1853

G. H. Powers Jp

State of Illinois

Richland County I G. H. Powers a Justice peace
in and for said County do certify that the foregoing
is a true transcript of my docket and the papers
enclosed the said papers in the above Cause
given under my hand and seal this 23rd day of April
1853

G. H. Powers Jp

Copy of summons in Circuit Court

State of Illinois — The People of the state
Richland County — To the Sheriff
of said County Greeting we Command you
to summon the President & Trustees of the
Lawyer of Almy to be and appear before
the Circuit Court of said County on the
first day of the next term thereof to be hold-
en at the Court House in Almy on the third mon-
day of September next to answer unto Alexander
B. R. Byers on an appeal and have you then
and there this writ

Witness our hand & seal of our
said Court at office in Almy this 25th
day of April 1853

(Signature)

M. B. Snyder Clerk
Endorsed & served the within by reading
to Horace Hayward President & Alumn both
Hoover Wm Beck & Jm Wilson this 14th May 1853
J. H. Parker Jp

Just. Powers heard that at the
said September term of 1853 of the Cir-
cuit Court in and for the said County of
Richland the above entitled Cause on to be
heard in said Court on appeal from the

On Tuesday being the 2^d day of the said term
of Court the following Order was made to wit

The President & Trustees
of the town of Almy

A L & R Byers } Appeal

Came the parties by their attorneys on at
this Cause having been submitted for trial
by the Court and after evidence heard
the Court being not sufficiently advised
took time &c

And on Thursday the 4th day of said
term the following Judgment was ren-
dered to wit

President & Trustees
of the town of Almy

A L & R Byers } On appeal

The Court being
now sufficiently advised touching the prem-
ises it is considered and adjudged that
the judgment of the Justice of the peace
be affirmed for the sum of Ten dollars
and that the Plaintiffs recover of the said
defendants the said sum of ten dollars
together with their Costs and charges about
their suit in this behalf as well before the
Justice of the peace as in this Court Ex-
cepted and they of have Execution &c
taken filed &c

Copy of Bill of exceptions

State of Illinois, Richland County,
Richland Circuit Court September
term A D 1853

The President & Trustees of the
Town of Albany

Alexander & Robert Poyer

Appeal

Be it remembered that at the
said September term of 1853 of the Circuit
Court in and for the said County of Rich-
land the above entitled Cause came on
to be heard in said Court on appeal from
the decision of George S. Poyers Esq. an
acting Justice of the peace in and for
said County and was tried before Harlan
Judge of said Court without the interven-
tion of a jury on Tuesday being the second
day of the said term of Court that the
said Plaintiffs produced in evidence and
read before the Court the following Ordinance
of the said Corporation of Albany to wit

In words and figures following to wit
Be it enacted by the President & Trustees of
the Town of Albany that every person who
shall sell barter or dispose of any vinous
spirits or mixed liquors in less quantity
than one barrel without first taking out
license to keep a Grocery shall be fined for every
such offence the sum of \$10.00 one half to the
informers Provided this act shall not be construed
so as to extend to any case where such liquor
is disposed of by a druggist bona fide for
medical Chemical or ^{culinary} sacramental purposes
and in every such case where any such liquor
shall be disposed of ^{bona fide} for any other
purpose under the guise ^{of} or presence of
the same being for medical Chemical or
Culinary or Sacramental purposes Every person
so selling bartering or disposing of it shall
be fined in the sum of \$15.00 It was admit-
ted that this Ordinance was passed on
the 12th of March 1853 that the Town of Albany
was incorporated under the General Law
Providing for such incorporations and
that the Defendant, as merchants partners
trading and doing business as such in said

tavern and not licensed to keep a grocery, after
the date of the ordinance permitted a gallon
of whiskey to be sold at their store on some
day prior to the issuing of the process from
the Justice of the peace in this case
Upon this proof and admissions the Court
not being sufficiently advised what Judge-
ment the member took time and after wards
on Thursday being the 4th day of said term
being advised in the premises rendered a
Judgment as follows that the Judgment
of the Justice of the peace in this Cause be
affirmed and that the said defendant
be fined for the use of the plaintiffs the sum
of ten dollars and that the plaintiffs
recover their costs and charges as well
before the Justice of the peace as in this
Court by them in this behalf expended
of the defendant, and that a writ of
Execution be to the Sheriff on which
Judgment the said defendant, they
may there excepted and filed their
bill of exceptions and asked that the same
might be allowed by the Court signed
and made a part of the record in this Cause
which is done, J. Harlan Seal

State of Illinois,
Richland County, ss.
Dell Morris V B
Myrder Clerk of the Circuit Court
with my assent and for said Court hereby Certi-
fy that the foregoing is a true and perfect
copy of the proceedings and Judgment in the
above entitled Cause as fully and completely as the same re-
main of record in said Court
In witness whereof I have here-
unto set my hand and the
seal of said Court at Olney
this 11th day of November A D
1853 J. B. Myrder Clerk

A. L. & R. Byers, Plaintiff in Error

vs

The President & Masters
of the Town of Olney, Defendants in Error

Error to Richland -

This was a proceeding had in the Richland Circuit Court, on appeal from ^{the judgment of} a Justice of the Peace of the County of Richland -

The President & Masters of the Town of Olney instituted suit against A. L. & R. Byers, under the provisions of an ordinance of the said Corporation, against selling spirituous liquors within said corporation, by a less quantity than one barrel. The case was tried before G. S. Powers, Esq., a Justice of the Peace in and for said Richland County, and by a jury of six men, who found the defendants guilty and assessed their fine at \$5.00 - Whereupon said Justice rendered judgment for said fine & costs of suit against defendants and in favor of plaintiffs -

From this judgment of the Justice of the Peace the defendants appealed to the said Circuit Court, which appeal came on to be heard before the said Circuit Court at the Sept. Term A. D. 1853 thereof - at which time the said Circuit Court affirmed the judgment of the Justice of the Peace for

the sum of \$10.00 & costs. The rendition
of which judgment of affirmance, is
now here assigned for error.

The ground relied upon by Plaintiff
in Error for the reversal of said judgment

Point 1st That by the laws of the State of Illi-
nois, no penalty is imposed for the
sale of Spirituous liquors, unless when
sold by a less quantity than one quart.
And that the ordinance of the Corpora-
tion of the town of Olney is repugnant
to the laws of the State of Illinois, in mak-
ing that the subject of penalty which
is recognized by those laws, or legal and
authorized, and is consequently void and
unoperative.

Point 2nd That The President and Trustees
of the Town of Olney had no power
to pass the ordinance in question
inasmuch as the legislature of Illi-
nois had legislated upon this sub-
ject & passed a law inconsistent
with the terms of said ordinance
which law was in force as well in

the corporation of Olney or else-
where in the State of Illinois -
Point 3 - That the Ordinance of the Town
of Olney is in conflict with the
provisions of the general laws of
the State of Illinois & must
necessarily yield to the force
and effect of those laws -

Authorities cited

Laws 1853 - pp 91 & 92

An Act entitled "An Act to prohibit the sale of intoxicating
drinks" In force Feb. 12th 1853 &
Laws thereby revised -

A. L. & R. Byers

11.

The President & Com-
tee in the Town of
Oheoy-

Enor to Rolland

Abstract

Grand

Section I. The town of Olney being incorporated under the general law, in the twelfth of March 1853, provided by ordinance that no person shall sell, buy or dispose of any vinous, spirituous or mixed liquors in a less quantity than one barrel, without first taking out a license to keep a grocery - except for medical, chemical and culinary purposes by druggists.

The plaintiffs were fined ten dollars for a violation of this ordinance. The only question submitted for decision is as to its legality.

A very analogous question, was presented in four previous cases in this Court, in each of which, the power of town and city ~~ordinances~~ corporations have been sustained in local legislation, within the charter powers conferred.

The first case is that of *King et al v Jacksonville*, 2 Scam. R. 305, where a similar ordinance was sustained.

In *Ryan v Bates* 15. Ill. R. 87. the power of creating nuisances and providing for arrests is sustained. and so again in *Main v McCarthy et al* 15. Ill. R.

In *Goldland v Trustees of Jacksonville* 15. Ill. R. this question in a broader sense was presented - and the power to declare the sale a nuisance was sustained by this Court. The power conferred upon Jacksonville are no greater in respect to this question, than those of the general law, under which this ordinance was passed -

The Court in *Woodward v Turnbull* 3
Scam. R. 1. went even further than any of
the former cases. It was there held, that the
act of 1831, empowering incorporated towns
to provide for licensing ~~shows~~ "public shows"
repealed by implication, the general law of
1829 on the same subject, within the corporate
limits. An application of this last principle
to this subject, would effect a suspension of
the general law within the corporate limits,
by the passage of an ordinance. But we
see no repugnance between the general law
and the ordinance in this case. The
general law prohibits a sale without license,
in a less quantity than one quart. The
ordinance only extends the quantity to a
barrel and does not require a license
to be procured from the corporation.
The subject matter of sale without
license has been in part only, regulated
by forbidding sales in small quantities,
and has left the larger sales without
regulation by law. The ordinance
comes in to regulate sales in larger
quantities. I cannot see the repugnance
to any law of the State, and believe
the subject to be within the corporate
powers, for regulation.

Judgment Affirmed

Treat. C. J. Dissented

A. L. & R. Byers
vs
The President and
Trustees of the Bank
of New York

opinion by
Scates

No 9

November 1852

A L & R Byers
v

The President & Trustees
of the Town of Olney

Errors to Reckoned

Opinion by
Scales, S.

Judgment Affirmed

8755