

8854

No.

Supreme Court of Illinois

John Koop

vs.

People

71641  7

72

Koop
vs
The People

June 1868

Reputed

At a Circuit Court begun and held
at the Court House in the town of Carle
County of Clinton and State of Illinois on
Monday the day of August AD 1867
Present the Hon Silas S. Bryan Judge
of the second Judicial Circuit of which
the County of Clinton forms a part J Perry
Johnson State Attorney, William Schaffer
Sheriff and Thos J. Smith Clerk
officers holding said Court when the
following proceedings were had and orders
made to wit:

The People vs } Indictment for
vs } Keeping open a tippling
John Koop } house on the Sabbath Day

and now at this time to wit the
8th day of August comes the Grand Jury
and returns into open Court an Indictment
against the Defendant John Koop for keeping
open a tippling house on the Sabbath Day
It is thereupon ordered by the Court
that Capias issue against said Defendant
returnable at the March term 1868 of the
Clinton Co Circuit Court and that he be
admitted to bail in the penal sum of
one hundred dollars & cause continued

Copy of Indictment

State of Illinois } Of the August term of the
Clinton County } Clinton County Circuit
Court in the Year of our Lord 1867

The Grand Jurors Chosen Selected and Sworn in and for the County of Clinton aforesaid, in the name and by the authority of the People of the State of Illinois upon their oaths present that John Koop late of the County aforesaid on the ninth day of June in the year of our Lord one thousand eight hundred and sixty seven at and in the County of Clinton aforesaid unlawfully and willfully did then and there keep open a tipping house on the sabbath day contrary to the form of the statute in such case made and provided and against the peace and dignity of the People of the State of Illinois

And the Grand Jurors aforesaid in the name and by the authority aforesaid upon their oaths aforesaid do further present that the said John Koop on the sixteenth day of June in the Year of our Lord one thousand eight hundred and sixty seven at and in the County of Clinton aforesaid unlawfully and willfully did then and there keep open a tipping house on the sabbath day contrary

(3) to the form of the statute in such made and provided and against the peace and dignity of the People of the State of Illinois

And the Grand Jurors aforesaid in the name and by the authority aforesaid upon their oaths aforesaid do further present that the said John Koop on the twenty third day of June in the year of our Lord one thousand eight hundred and sixty seven at and in the County of Clinton aforesaid unlawfully and willfully did then and there keep open a tipping house on the Sabbath day Contrary to the form of the statute in such Case made and provided and against the peace and dignity of the People of the State of Illinois

J Perry Johnson
"Filed Aug 8th 1867" States attorney
"Ph S. Smith Clerk"

Capias & Bail ordered \$ 100⁰⁰

Upon which Indictment the following Capias was issued in the words and figures following to wit:

State of Illinois }
Clinton County }
Jesse

The People of the State of Illinois
to the Sheriff, Coroner or any Constable of
Clinton County greeting: We Command

(4)
You that you take the body of John Kook
if he shall be found in your County and
safely him keep so that he be and appear
before the Circuit Court of said County of
Clinton on the first day of the next term
thereof to be holden at the Court House in
Cady in said County on the first Monday
of March next to answer unto a Certain
Bill of Indictment preferred against him
in said Court for keeping open a tippling
house on the Sabbath day and have you
then and there this writ with an endorsement
thereon as to the manner in which you shall
have executed the same

J S

Witness Phil S. Smith Clerk
of said Court and the seal thereof
At Cady this 17th day of Dec
A.D. 1867

Phil S. Smith Clerk

On the back of said Capias were the
following endorsements. "The Sheriff will
hold the Defendant to bail in the sum of
One Hundred Dollars J S, Smith Clerk
State of Illinois

Clinton County }
I duly served the within
by arresting the within named John Kook and
by admitting him to Bail this Jan'y 15th 1868 as
I am therein Commanded "Wm Schaffer Sheriff"

(5)

The Defendant was admitted to bail upon recognizance in the words and figures following to wit

State of Illinois }
Clinton County } Be it Remembered that
on the 15th day of January 1868 before the
subscriber Sheriff of said County personally
appeared John Koop and Peter Weber
who acknowledged themselves to owe and
be indebted to the people of the State of Illinois
the sum of One hundred dollars to be levied
upon their Goods and Chattels Lands and
Tenements to the use of said People if default
be made in the Condition following to wit

Whereas the Sheriff this day arrested the
said John Koop who is now in Custody
upon a Writ of Capias Ad respondendum &
issued from the Circuit Court of said County
upon an indictment now pending in said
Court against him for keeping open a
tippling house on the Sabbath day -

Now if the said John Koop shall 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
Cahon on the first Monday in the Month
of March then and there to answer to said
indictment and abide the order of the

(6) Court and not depart the Court without
leave there this Recognizance to Clean and
be void otherwise to remain in full force
and virtue

John Koot (seal)

Peter Preber (seal)

"Taken and acknowledged before me the
'year and day above written"

"William Schaffer"

"Sheriff C. C."

order of Court

And now at this time to wit the
3^d day of March comes the state by the
State attorney and the defendant being
in Court in person enters his plea of not
guilty. Whereupon it is ordered by the
Court that a jury be called. There came
the jury to wit Pleasant Wheeler Conrad
Konkalt R. S. Ellgood A. Harpstone
D J Richardson J L Johnson J E Bastin
J C Strang W. H. H. Johnson W. M. Norton
Jace Thomas and John Gibson who were
duly empanelled tried and sworn to try
the issue joined after hearing the evidence
and arguments of Counsel retire to
consider of their verdict and after
considering the same return into Court
the following verdict to wit "No the jury
find the defendant guilty of keeping open

(7)

a tippling house on the Sabbath day
18 Months from the August term of this
Court. Thereupon the defendant enters
his Motion for new trial and Motion
refused, Motion in arrest of Judgment
and Motion refused by the Court and
Judgment on the verdict for fifty dollars
& costs and that he stand committed until
the fine and costs are paid

Now at this time to wit the 18th day of
March comes the Defendant by his attorney
and file their bill of Exceptions in the
words and figures following to wit;

State of Illinois } In the Circuit Court
Clinton County } of Clinton County

March term 1868

The People of the State of Illinois }
vs } Indictment for keeping open

John Koop }
} tippling house on the Sabbath
} Day

Be it remembered that on the
trial of the above cause before the Hon
Judge Elias S Bryan and a jury on the
Plea of not guilty the People by the States
attys to prove the issues on the part of
said people introduced Frederick Wren
who being sworn said he knew the

defendant lived in Memphis Clinton County Illinois. Kept a boarding house there, in the front room Defnt. Kept a Grocery or Saloon - That he sold beer, in said saloon. He said he believed one time he saw the Defnt. sell a glass on Sunday

He did not remembered of any other time on Cross examination he said he could not say the sale of the beer he referred to was on either 9th 16th or the 23rd of June 1867 - Could not swear that he ever saw the house of Defnt. open on Sunday more than the one time stated but it was a boarding house and the entrance to it was through the bar room

Recross examined by the People. Question:
* State whether you saw the Defendants house open, and the defendant selling beer or other drinks in it on any Sabbath day within eighteen months before the last August term of this Court?

Objected to by Defendant on the ground that the allegations in the indictment are certain days - and to those days the proof should be confined & 2^d. That said question is vague and general in form & 3^d because beer is not spiritous liquor & its sale on Sunday is not an offence under our statute

This answer should
come in under the
16th line pag 8 of this
record

Answer. There was one other entrance not
through the saloon. The saloon could have
been shut up without shutting boarding
house up, but the saloon was used as
a sitting room for the boarders -)

Objection overruled by the Court to
which judgment of the Court in over
ruling said objection. The said Defend
ant at the time then and there excepted.

The said witness stated that he could
remember of but one time of Defendant
selling in his house on Sunday within
Eighteen months of the time of this bill
of indictment and that was a glass
of beer that was on same Sunday but
about what time or whether on the Sunday
charged in the declaration he could not
state

This was all the evidence, the Court
thereupon at the instance of the People's
Council gave to the jury the following
instructions to wit:

First: The Court instructs the jury that in
this case it is not necessary for the
prosecution to prove any particular Sabbath
day but that the offence was committed
within eighteen months of the time of
the finding of the indictment

Given

(10)
found

The Court instructs the jury that the law against keeping open tipping house is violated as well by selling beer as of any other liquors in his house and if the jury from the evidence believes the Defendant kept his grocery open within eighteen months of the finding of the indictment and sold beer or other liquors your verdict should be guilty "Given"

To the giving of which instructions the Defendant objected which objections was overruled by the Court & to the judgment of the Court and to the giving of said instructions the said Defendant by his Counsel at the time then and there accepted.

The Defendant by his Counsel asked the Court to give to the jury the following instructions which were given to wit:

- 1st The Court instructs the jury that they are the judges of the law and the facts in Criminal Cases
- 2^d The Court instructs the jury if you should find the defendant guilty state the Court on which you find him guilty

(11)

Whereupon the jury retired & having considered of their verdict return into Court their verdict in words & figures following to wit, "We the jury find the defendant guilty of keeping open a tippling house on the Sabbath Day once within eighteen months previous to the Aug. term of Court 1867"

Whereupon the said Defendant by his Counsel moved the Court to set aside the verdict & Grant a new trial

- 1st because the said verdict is against the law
- 2^d The said verdict is against the evidence
- 3^d Because the Court permitted improper evidence to go to the jury
- 4th Because the Court at the instance of the people gave instructions against the law to the jury which motion was overruled, to the judgment of the Court in overruling the said motions for a new trial the said Defendant by his Counsel then & there excepted at the time

And the said Defendant by his Counsel then moved the Court to arrest the judgment of the Court in this case because the said indictment is not

(12) in law Which Motion in arrest of
Judgment & sentence & Judgment of the
Court pronounced on the verdict was by the
Court overruled, to which the said Deft.
at the time excepted & prays this his
bill of exceptions be signed and sealed
and made a part of the record which is
done
Silas L. Bryan (Seal)
Judge 2^d Judicial Circuit

State of Missouri
Clinton County } Geo

I the Undersigned
Clerk of the Circuit Court within
and for said County and state aforesaid
do hereby Certify that the above is
a true and correct Copy of the orders
of Court as appears of record in my
office and of the papers on file in
said Cause

Witness my hand and official
seal of said Court at Cahle
this June 1st A.D. 1868

Thos L. Smith

Clerk



And now comes the said paper written
by O. Melberg & Vanhorkke his
attys, and says in the foregoing
Record & proceedings, their offices,
manifest errors, and for the
assignment of error
herein, say the Court erred

1. Because the instructions
of the People given by the
Court at the instance of
the State atty was not the law.

2. The Court permitted improper
evidence to go to the jury on
the part of the people -

3. The Court erred in overruling
the self motion for new trial

4. The Court erred in overruling
motion in arrest of judgment.

4. Because the verdict was
against the law & the
evidence wherefore

O. Melberg & Vanhorkke
for the people

And am come to said left
error and say that there is
no error in the record
of record. *M. H. H. H.*

W. H. H. H.

Att. H. H. H.

72

John Kaoh

left in error

The People

left in error

*Errors to
Clinton Co*

*Filed 30 June 1908
M. H. H. H.
OK*

IN SUPREME COURT.

The State of Illinois, First Grand Division.

June Term, A. D. 1868.

JOHN KOOP, Plaintiff in Error, }
vs. } Error to Clinton.
THE PEOPLE, &C. Def't's in Error. }

ABSTRACT.

- 2 Indictment, containing two counts, for keeping open a Tippling House on the Sabbath day,
in usual form.
3 Capias.
4 Bail bond.
5 March Term, A. D. 1868. Plea of not guilty. Trial. Verdict of guilty. Motion for
6 new trial overruled. Fine of \$50.
7

BILL OF EXCEPTIONS.

Frederick Weve testifies that, he knew the defendant lived in Memphis, Clinton county; kept a boarding house there; in the front room defendant kept a grocery or saloon; that he sold beer; that defendant sold a glass on one Sunday; did not remember of any other time.

8 *On Cross-Examination* said, that he could not say that the beer was sold on either the 9th, 16th or the 23d of June, 1867; could not say that he ever saw the house of defendant open on Sunday more than once, but the house was a boarding house and the entrance to it was through the bar room.

On Re-Examination—Question, "State whether you saw the defendant's house open and the defendant selling beer or other drinks in it on any Sabbath day within 18 months before the
9 last August term of this Court." Objected to. Objection overruled. Ex. In answer to question, witness said that saloon was used as a sitting room. That he could only remember one sale of beer.

This was all the evidence.

The court instructs the jury, 1st, that it was not necessary to prove any particular Sabbath
10 day within 18 months. 2d. That selling beer is violating the law against keeping open tippling houses. To giving of which instructions defendant objected.

11 Verdict of jury, that the defendant is guilty of selling beer on the Sabbath day once within 18 months.

ASSIGNMENT OF ERRORS.

- 1st. The Court erred in giving the instructions severally.
- 2d. The Court erred in admitting improper evidence for the people.
3. The verdict is against the law.
4. Court erred in overruling plaintiff's motion for a new trial.
5. Court erred in overruling motion in arrest of judgment.

BRIEF.

This record presents these questions for solution, to-wit:

1. Is the sale of *one glass of beer* on the Sabbath day a criminal offence?

Our criminal code, where it defines the offence, of course governs, but when the offence is referred to as "keeping open a tippling house," &c., without any other definition, what constitutes a tippling house must depend upon the Common law, or English rule. As to what is a

tippling house see Parple's Statutes, p. 384, §. 130. See Crim. Code, Sec. 234, Purple's Statutes, p. 403; 2 Wharton Am. C. L. §§ 2435 and 2438; 2 Bouv. Law Dic., 589; Webster's Dic., word tippling-house. Bacon vs. Wood, 2 Scam. 265.

2. The sale of a single glass is not sufficient proof to complete the offence.

3. The next question is, whether the time, that is the particular Sabbath day alleged in the indictment, is not a material description of the offence and must be proved as alleged. This the court denies in the first instruction. Unless the prosecution is held to the proof of the days, how can the defendant plead the record of conviction or acquittal to an other indictment for other Sabbath days within the same eighteen months?

4. Was it proper for the court to permit the prosecution, against the defendants objection, to ask the question if witness knew of defendant's selling beer, "or other drinks," on any Sabbath day within eighteen months of finding indictment? See page 8 of Record.

5. Is the 2nd instruction not very erroneous? (P. 10, Record.) It not only asserts the sale of beer, as much a violation of the law as any other liquor in his house, (there never was any other liquor proved to be in his house) and then instructs the jury,—“that if deft. kept his grocery open within 18 months of the finding the indictment, and sold beer and other liquors, your verdict should be guilty.” Not limiting it to the Sabbath day at all.

Then again, is the verdict right or proper, to-wit: “We, the jury, find the deft. guilty of keeping open a tippling house on the Sabbath day, 18 months from the August term of this court.”

If 18 months before, or after, the August term, at which the indictment was found, then no sale was proved within the statute of limitations.

H. K. S. O'MELVENY, and

G. VAN HOOREBEKE,

Attys for Plffs. in Error.

72
Abstract & Brief
Koop John
vs
The People

8854

June 5th June 18 18
H. H. H. H.
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In the Supreme Court.
First Grand Division
June Term A.D. 1868.

The People v.
The People. 3
Error to Clinton 3

Prif of Deft in Error.

The evidence shows that the Plaintiff in error kept a grocery or saloon. Any place where liquor is sold by the drink is a "Tippling house".

If the Plaintiff in error kept such saloon open on the Sabbath day, and on such Sabbath day was ready and willing to sell liquor to whoever might call for it, then he is guilty as charged in the indictment.

It makes no difference about the quantity he sold, or the number of glasses. To keep a Tippling house open on the Sabbath day for the purpose of

selling liquor by the drink, is a violation of the statute, and it makes no difference whether any liquor is sold or not.

In this case he the Plaintiff in error did keep a Tippling House open on the Sabbath day, and did show his readiness and willingness to sell liquor. He sold one glass of beer, that is all anyone called for. It was not his fault that he did not sell a thousand.

The fact is that the Plaintiff in error kept his Tippling House open every Sabbath, under the pretence that it was his sitting room. The law was made expressly to prevent Tippling Houses, becoming sitting rooms for the Sabbath day.

There appears to be nothing wrong in the instructions, and I think the verdict substantially correct.

Wm. H. Brown

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People
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June 13th 1808
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Appellants
abstract & Brief
Proofs
As
The People

$$\begin{array}{r} 10401 \\ \hline 78 \\ \hline 2585 \\ \hline 4 \\ \hline 284 \\ \hline 85 \\ \hline 228 \\ \hline 151 \\ \hline 85 \end{array}$$

Filed 5th June 1808
W. W. W. W.
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