

8758

No. \_\_\_\_\_

# Supreme Court of Illinois

Anton Zunesseler

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vs.

People

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71641  7



Plas had before the Hon W<sup>m</sup> K  
Parrish acting Judge of the 12<sup>th</sup> Judicial  
Circuit in the State of Illinois comprising  
among other Counties the County of  
Marion

Be it remembered that at the April  
Term of said Circuit Court A<sup>d</sup> 1855 to wit  
on the 3<sup>rd</sup> day of May 1855 the Grand Jury of  
said County of Marion returned into Court  
a Bill of Indictment against Anton Zerrussell  
as a true bill which said ~~whole~~ said bill  
of indictment is in the words & figures following  
to wit:

State of Illinois }  
Marion County }<sup>35</sup> Of the April Term of the  
Marion Circuit Court in  
the year of our Lord one thousand  
Eight hundred and fifty five

The Grand Jurors Chosen Selected and  
sworn in and for the County of Marion in  
the name and by the authority of the People of  
the State of Illinois upon their oaths present  
that Anton Zerrussell late of the County of  
Marion on the fourth day of April in the  
year of our Lord one thousand Eight hundred  
and fifty five at and in the County of  
Marion and State of Illinois, the gift of  
Spirituosus liquer the same then and there  
being by a less quantity than one quart unlawfully  
did then and there sell to a certain person,  
the name of such person being to the Grand  
Jurors of aforesaid unknown, he the said Anton  
Zerrussell not then and there having a legal  
license to keep a grocery, 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 upon their oaths  
aforesaid, in the name and by the Authority  
aforesaid, do further present that the said Anton  
Zurresseller late of the County aforesaid on the  
fifth day of April in the year of our Lord  
one thousand eight hundred and fifty five,  
at and in the County of Marion and State of  
Illinois one gill of Spirituous Liquor the same  
then and there being by a less quantity than one  
quart, unlawfully did then and there sell to  
some person the name of such person being to the  
Grand Jurors aforesaid unknown, he the said  
Anton Zurresseller not then and there having a  
legal license to keep a grocery, 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 upon their oaths  
aforesaid, in the name and by the Authority  
aforesaid, do further present that the said  
Anton Zurresseller late of the County aforesaid  
on the sixth day of April in the year of our  
Lord one thousand eight hundred and fifty  
five, at and in the County of Marion and  
State of Illinois one gill of Spirituous Liquor  
the same then and there being by a less quantity  
than one quart, unlawfully did then and  
there sell to one Durham Tracy, he the said  
Anton Zurresseller not then and there having  
a legal license to keep a grocery, 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

James S Robinson  
States Attorney

Upon the back of said bill of indictment are  
the following endorsements viz: "April Term 1855,  
The People vs Anton Zernselder, Selling Liquor by small  
without a license so to do, A True Bill Saml Hall foreman  
and witnesses W. Prosser, Simpson Wagner, Dorkon  
Tracy, Saml Hall Bail \$100. Filed May 3<sup>rd</sup> 1855  
B. F. Marshall Clk"

And afterwards to wit at the September  
Term A.D. 1855 of said circuit court the said  
Defendant by O'Malley his attorney files his motion to  
quash the said indictment where said motion is  
in the words, figures following to wit

"In Hanc Co Cir Ct A.D. 1855  
Sept<sup>r</sup> Term

People &c }  
vs } Indict for selling Liquor without  
Zernselder } License

And now the sd. Dept comes and  
moves the court to quash sd. indictment in this  
cause and for reason points out the following to  
wit

1<sup>st</sup> Because at the time sd. indictment was found no  
law was in force, which authorized the granting  
license to sell intoxicating liquor

2<sup>nd</sup> Because at the time sd. offense is charged to  
have been committed there was no law in force pro-  
hibiting the sale of intoxicating liquor,

3<sup>rd</sup> That said indictment is vague and uncertain  
in not describing the kind of liquor charged to have



been illegally sold

4<sup>th</sup> Because 1<sup>st</sup> indictment 2<sup>d</sup> indictment is general and uncertain as to the nature of the charge

5<sup>th</sup> Because 2<sup>d</sup> indictment does not conclude as required by the existing State Constitution,

And because 2<sup>d</sup> indictment is otherwise defective and insufficient and uncertain in law &c

O'Melvey for Deft  
upon the back of said Motion is the following endorsement viz: "Filed Sept 18<sup>th</sup> 1833, B. H. Marshall Clk"

And afterwards to wit on the 18<sup>th</sup> day of September  
of the September  
Term of the Circuit Court aforesaid before the Judge aforesaid the following Order appears of Record to wit:

"The People  
vs  
Anton Garassella } Selling Liquor by a less quantity than  
on quart without License

Comes the said plaintiffs by Robinson their attorney and the said defendant in proper person by O'Melvey his attorney and files his motion to quash the indictment herein, which said motion after arguments heard is overruled by the court

Whereupon the said defendant pleads "Not Guilty" as charged in the indictment herein, and by agreement this cause is submitted to the Court, And the Court after hearing the proofs and being fully and sufficiently advised of & concerning the premises, enters a verdict of guilty under the first and second counts of the indictment herein and Not Guilty as to the third Count

It is therefore ordered and adjudged by the Court that the said defendant do make his fine to the People aforesaid in the sum of ten dollars on each of said first and second counts of said indictment making in the aggregate the sum of twenty dollars together with







State of Illinois } Of the September Term of Marion County  
Marion County } Circuit Court A.D. 1853

The People of the State of Illinois

vs

Anton Zuercher

Indictment for selling Liquor  
without License

Be it remembered that  
on the calling said cause for trial in said court before  
the Hon W. K. Parrish acting judge of said Circuit  
Court upon an indictment in the words and figures  
following to wit (here set it out verbatim)

The sd. Deft by O'Nealey his atty came and filed  
his Motion to quash said indictment, which Motion  
is in the words and figures following to wit (here set  
out the motion verbatim)

Which motion after arguments heard was by the  
Court overruled, to which Judgment of the Court  
overruling said Motion to quash the sd Deft by  
his counsel at the time excepted

And thereupon said cause by consent of parties  
was submitted to the Court (a jury being expressly  
waived) for trial on the plea of not guilty to said  
indictment, And the said Court upon hearing  
the evidence found the sd Deft guilty upon the  
- - Counts of said indictment and not guilty as  
to the - - count

And thereupon the sd Deft moved the Court for a  
new trial for the reason that the verdict of said  
Court was contrary to law, which motion was by  
the Court overruled, to which Judgment of the  
Court in overruling said motion the sd Deft by  
his counsel at the time excepted

And thereupon the said defendant moved in  
arrest of Judgment, for that no evidence had been  
submitted on the part of the prosecution to show, or



tending to show that said defendant had not a legal license to keep a grocery, which motion in arrest of judgment the said court overruled & rendered judgment in the words and figures following to wit (here set out the final judgment)

to which judgment in overruling said motion in arrest of judgment and to the judgment of said court of conviction as rendered the said deft by his attorney again excepted at the time. Prays that this his bill of exceptions be signed sealed & made a part of the Record in this cause, which is done accordingly

W<sup>m</sup> H. Parish *ES*

State of Illinois }  
Marion County }<sup>ss</sup>

I B F Marshall Clerk of the Circuit Court within & for the County and State aforesaid do hereby certify that the foregoing is a correct Record of proceedings had in the foregoing case, as the same appears by Records files of my office.

In testimony whereof I have hereunto set my name and affixed the seal of said Circuit Court this 18<sup>th</sup> Day of October A D 1853  
B F Marshall Clerk



Supreme Court of Illinois 2 Nov. Term  
1<sup>st</sup> Division 3 1855

And now comes the said plaintiff in error by his attorney and says that there is error in the record & proceedings in the above case and that the Judgment ought to have been in favor of plaintiff in error on this

1. That the court overruled the motion to quash the said indictment.
2. That the Court found a verdict in favor of defendant.
3. That the Court tried the case without the instructions of the law.
4. That the Court overruled the motion in error of judgment.
5. That Judgment was given for the People with a fine of \$1000 in error.

And no objection

by  
The People

Order in error.

J. S. Robinson

Gov. of Illinois

Filed Nov. 3. 1855.

A. Johnston

1021 1/2 S. 20  
Clerk

State Attorney

6839



No  
39

# Jury rules on People

- o 1 Indictment based Conclusion  
no description of the liquor
- 15 Feb VT 290
- 8 Mich 721 (No)
- 10 Mo 498 (430)
- 2 Cases tried without jury.
- 3 In them very license law?
- LS 55-25-See 30.

15 Me 235.

## Opinion

- Indictment. { 23 Pitt 279.5
- { 6 Black 105-3
- 25 Me 307
- 17 Me 154.
- trial by Circuit
- Jury. 3 Cases 353-4

Repeal. 13 39

Reply: Constitution should be used  
rather.



No 39

Intestment  
Selling liquor

Prob. Ruesh

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28  
224



1039

Journal  
of  
The People

Appended

Copy of final issue  
sent down

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