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THE UNIVERSITY OF CHICAGO

COMPLAINT.

(Filed Sept. 24, 1912)

POLICE COURT, CITY OF PASSAIC.

STATE OF NEW JERSEY, }  
COUNTY OF PASSAIC, } ss.

Before me, the subscriber, 10  
....., Police  
Justice of the City of Passaic,  
in said County, personally ap-

peared Benjamin F. Turner, of No. A Detective Sergeant,  
Passaic, N. J., who, being duly sworn according to law  
deposeth and saith that Louis Salerno, of No. 78 Brighton  
Ave. did on or about the 24th day of September 1912 in  
the said City of Passaic, within the corporate limits of  
the said City of Passaic, without a license for that purpose  
first had and obtained, did sell (at his place of business 20  
that of a Restaurant, at No. 78 Brighton Ave. in the City  
of Passaic, N. J.) to one Charles Papp, lager beer. In  
violation of Section One of an amendment to an Ordinance,  
(Approved August 23d, 1912) entitled "An ordinance to  
license and regulate the keeping of inns, taverns and beer  
saloons and the sale of Spirituous, Vinous, Malt and Brewed  
Liquors in the City of Passaic, New Jersey, Approved July  
17th, 1911.

Therefore the complainant prays that the said defendant  
may be apprehended and held to answer said complaint and  
dealt with as law and justice may require. 30

WITNESS, Thomas P. Costello, Esq., Judge of said  
Passaic Police Court at Passaic aforesaid.

BENJ. F. TURNER,  
Complainant.

Sworn to and subscribed before me at Passaic, this 24th  
day of September, 1912.

GEO. H. RICE,  
Clerk of Police Court. 40

## RETURN BY POLICE JUSTICE.

(Filed Oct. 11, 1912).

STATE OF NEW JERSEY, }  
 COUNTY OF PASSAIC, } ss.

10 BE IT REMEMBERED, That on this Twenty-fourth day of September, Nineteen Hundred and Twelve, in the City of Passaic, New Jersey, Louis Salerno of 78 Brighton Avenue, Passaic, New Jersey, was brought before me, Thomas P. Costello, Police Justice of the City of Passaic, charged with selling without a license at his place of business, that of a restaurant, No. 78 Brighton Avenue, Passaic, New Jersey, lager beer, in violation of Section 1 of an amendment to an ordinance, (Approved August 23, 1912) entitled, "An Ordinance to license and regulate the keeping of inns, taverns and beer saloons and the sale of spirituous, vinous, malt and brewed liquors in the City of Passaic, New Jersey, approved July 17, 1911," and he being represented by his counsel, William B. Davidson, requested an adjournment of said case until the twenty-fifth day of September, which was granted, and on this 20 twenty-fifth day of September, the said Louis Salerno being again brought for trial, his attorney did demand a trial by jury. I refused the request for a trial by jury on two grounds, first, because this is a summary proceeding, secondly, the application should have been made yesterday at the time the motion for adjournment was granted 30 instead of waiting until the last moment. Mr. Davidson at this time stated that if he proceeded to trial that it was with the understanding that he waived none of his rights.

And it appearing by the evidence of Sergeant Benjamin Turner that on the twenty-fourth day of September, he and Sergeant Henry Crawbuck together with another man by name of Charles Papp, visited the restaurant of the defendant, Louis Salerno, and the said Charles Papp went inside and purchased a bottle of beer for five cents and the 40 same man again in the evening went into the restaurant

and again purchased a bottle of beer for five cents and which this officer saw him so do.

And it appearing further that Sergeant Turner when he went into the place at the time the arrest was made, a man, who afterwards was identified as one Roy, was drinking a bottle of beer and that this officer took it out of his hand, the said Roy said, "Don't take that, it is mine, I paid for it."

And it appearing further by his evidence that Sergeant Turner placed the said Louis Salerno under arrest for selling liquor without a license, and brought him to the station house on the said charge. 10

And it appearing by the evidence of Sergeant Henry Crawbuck that he was with Officer Turner and saw the said Charles Papp purchase a bottle of beer on the twenty-fourth day of September, in the restaurant of Louis Salerno for five cents.

And it appearing from his evidence that the said Louis Salerno had no license to sell liquor issued by the City of Passaic. And it appearing further by the evidence of Sergeant Crawbuck that he saw Officer Turner take a bottle of beer out of the hand of the man, whom he now understands is named Roy, and who he sees in Court. He heard this man say to Sergeant Turner, "Don't take that, it is mine, I paid for it." 20

And it appearing by the evidence of Charles Papp that he visited the restaurant of Louis Salerno and purchased a bottle of beer for five cents at noon time and again purchased a bottle of beer for five cents in the evening and that he saw many men there who also purchased beer and he saw them pay for same, and he also identified two bottles of beer which he purchased and which is here offered in evidence before this Court. 30

At the close of the case, Mr. Davidson requested that the case be dismissed, first, on the ground that the City has failed to prove its ordinance. The City Counsel requested the Court to allow him to submit the ordinance which the Court allowed. This was objected to by Mr. Davidson and he requested that the complaint be dismissed upon the ground that the complaint sets out that this de- 40

defendant violated Section 1 of an amendment to a certain ordinance and that it was not an amendment to that at all. I denied the motion and allowed an exception. A recess of twenty minutes was taken at this time to enable the City Counsel to prove the ordinance. Mr. Davidson objected to further testimony on the part of the City upon the ground that the City Attorney had stated to the Court that he had closed the City's case and the City had failed to prove the ordinance. The Court allowed the ordinance to be proved and granted an exception.

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Mr. Seger, deputy City Clerk, was then sworn and produced a certain ordinance which he testified was the original ordinance. Mr. Davidson objected to the method of proving the said ordinance but I allowed same and granted an exception.

The defendant at this point closed his case and having heard the evidence, I find that the defendant did not have a license to sell liquor as prescribed by Section 1, of the ordinance which reads as follows:

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Section 1: That it shall not be lawful for any person or persons, within the limits of the City of Passaic, without a license for that purpose first had and obtained in the manner prescribed by this ordinance, to keep an inn, or tavern, or beer saloon, or to sell or expose for sale, or to cause, or knowingly permit to be sold on, or in the premises owned or controlled by him, her or them, either directly or indirectly, any wine, rum, gin, brandy, whiskey or other ardent spirits, or ale, lager beer, porter or any composition or beverage of which any of said liquors shall form the chief ingredient, in quantities less than one quart. Any person or persons, violating the provisions of this section, shall, upon conviction of the same, be subject to a fine of Two hundred and fifty dollars (\$250) for the first offence, three hundred and fifty dollars (\$350.00) for the second offence, and for the third offence a fine not exceeding Five hundred dollars (\$500.00) and an imprisonment not exceeding six months, or either or both, at the discretion of the Court.

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And I therefore declare that the defendant not having a license to sell liquor in the City of Passaic and that he

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having violated the provision of Section 1 of the afore-said ordinance, hereby find him guilty of said violation, he must pay a fine of Two hundred and fifty dollars.

Defendant thereupon paid the said fine of Two hundred and fifty dollars and was released.

Given under my hand and seal the day and year afore-said.

THOMAS P. COSTELLO,  
Passaic Police Justice.

(L. S.)

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PETITION TO PASSAIC COMMON PLEAS.

Filed Oct. 4, 1912.

TO THE HONORABLE, THE JUDGE OF THE COURT OF COMMON PLEAS OF THE COUNTY OF PASSAIC.

10 The undersigned, your petitioner, respectfully shows, that on the 25th day of September, 1912, he was arrested by a Police Officer of the City of Passaic on a charge of selling liquor without a license, for that purpose had and obtained on the 26th day of September, he was tried and convicted and sentenced to pay a fine of Two hundred and fifty dollars.

Your petitioner shows that said arrest, trial and conviction and sentence were illegal, for the following reasons:

1. There was no process issued for his appearance, as provided by law.
2. The complaint was defective and insufficient.
3. The defendant was denied the right of trial by jury.
4. The penalty imposed was in excess of the power of the Police Justice.
- 20 5. The judgment of the Court was invalid and contrary to law and the passage of the ordinance was not properly proven.
6. The title of the ordinance as published, was inaccurate.
7. The proceedings were not in accordance with the laws for the recoveries of penalties for violation of city ordinances.

30 He therefore prays that an order may be made requiring the Police Justice of the City of Passaic, to order the said complaint warrant, proceedings and record of conviction to be forthwith brought before your Honor, that the legality of such proceedings and conviction may be reviewed and determined, and if such proceedings and conviction shall be found to be illegal, forthwith to set aside the same, &c.

And your petitioner will ever pray, &c.

LOUIS SALERNO, by  
W. B. DAVIDSON,  
Lawyers' Bldg., Passaic, N. J.

40 Verification.

## ORDER FOR HEARING.

Filed Oct. 4, 1912.

Upon reading the verified petition of Louis Salerno, in the above matter, it is on this fourth day of October, nineteen hundred and twelve, ORDERED, that Thomas P. Costello, Police Justice in the City of Passaic, return to this Court forthwith, the complaint, warrant, record, judgment and proceedings in the above matter and that Wednesday, the 9th day of October, nineteen hundred and twelve, at 10 a. m. be designated as the time at which this Court will proceed to inquire into the legality of said conviction. **10**

WM. HUGHES,  
P. J.

**20****30****40**

## DECISION OF JUDGE MARTIN,

PASSAIC COMMON PLEAS. Dec. 9, 1912.

10 "I have pending before me an application to set aside the conviction of Louis Salerno, in the City of Passaic, for violation of an ordinance of that city. There have been a number of reasons assigned for the setting aside of this conviction. I am unable to agree with any one of the reasons.

I believe that the Council had a right to pass the ordinance.

I believe that the arrest of the defendant was a legal arrest, and I believe that there was evidence justifying his conviction: and so long as the penalty imposed by the court did not exceed the penalty provided by the ordinance I sustained the conviction.

20 Another reason assigned was that he was entitled to trial by jury. Well, I find numerous authorities that hold that where a person is prosecuted for the violation of an ordinance that that does not give him a right to trial by jury; and so, for these various reasons, I refuse to set aside the conviction. In other words, I sustain it."

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## WRIT OF CERTIORARI.

**New Jersey Supreme Court**

NEW JERSEY, SS:

The State of New Jersey, to John J. Slater,  
(Seal) Clerk of the Passaic County Court of Common  
Pleas.

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GREETING: We being willing for certain reasons to be certified of a certain order of the Judge of the Court of Common Pleas of the County of Passaic, made on the ninth day of December, nineteen hundred and twelve sustaining a conviction of Louis Salerno, for the violation of a certain ordinance of the City of Passaic, by the Police Justice of the City of Passaic, wherefor a fine of two hundred and fifty dollars was imposed.

WE command you that the said order of the Passaic County Court of Common Pleas with all matters touching and concerning the same as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature, at Trenton on the Twenty-seventh day of June, nineteen hundred and thirteen, you certify and send together with this writ, that therein may be done what of right and according to the laws of this State should be done.

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Witness, William S. Gummere, Chief Justice of our Supreme Court, at Trenton aforesaid, this seventh day of June, nineteen hundred and thirteen.

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WILLIAM C. GEBHARDT,  
Clerk.

WILLIAM R. VANECEK,  
Attorney.

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## RETURN OF WRIT.

STATE OF NEW JERSEY, }  
 COUNTY OF PASSAIC, } ss:

10 I, JOHN J. SLATER, Clerk of the County of Passaic, and also Clerk of the Court of Common Pleas, in and for said County, do hereby in the schedule hereto annexed, sent to our Justices of our Supreme Court of Judicature at Trenton, the record and proceedings mentioned in the within Writ of Certiorari, with all matters touching and concerning the same, as I am within commanded.

(Seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, at Paterson, this Twenty-fourth day of June, A. D., Nineteen Hundred and Thirteen.

JOHN J. SLATER,  
 Clerk.

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## STIPULATION.

It is hereby stipulated that the above stated case shall be adjourned to the November term of this court with the same force and effect as though brought on for argument at the next term of court after the return of the writ.

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## REASONS.

(Filed July 5, 1913.)

TO THE JUSTICES OF THE SUPREME COURT OF THE STATE  
OF NEW JERSEY:

Louis Salerno, the said prosecutor, comes and prays that the order of the Court of Common Pleas of the County of Passaic, entered on December 9th, 1912, in the matter of the application for review of his conviction in the Police Court of the City of Passaic for the violation of Section One of an ordinance entitled "An ordinance to license and regulate the keeping of inns, taverns and beer saloons and the sale of Spirituous, Vinous, Malt and Brewed Liquors in the City of Passaic, New Jersey, approved July 17th, 1911," may be reversed and set aside for the following reasons: 10

1. There was no process for the appearance of this defendant. 20

2. The complaint was defective and insufficient.

3. The defendant was denied the right of trial by jury.

4. The penalty imposed was in excess of the power of the Police Justice to impose according to the charter of the City of Passaic.

5. The title of the ordinance as published was inaccurate. 30

6. The proceedings were not in accordance with the law for the recovery of penalties for violations of city ordinances.

7. The said order was in divers other respects illegal, unjust and contrary to law.

WM. R VANECEK,  
Attorney of Prosecutor. 40

# New Jersey Supreme Court

LOUIS SALERNO,

*Prosecutor*

vs.

THE CITY OF PASSAIC, ET AL.,

*Defendants.*

*On Certiorari.  
Notice of Argument.*

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## NOTICE TO THE CITY OF PASSAIC.

Sir:

Take notice of the argument of the issues joined in the above entitled cause before the New Jersey Supreme Court at the State House in Trenton, on the first Tuesday in November nineteen hundred and fourteen, at the opening of court on that day, or as soon thereafter as counsel can be heard.

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Yours, etc.,

WILLIAM B. DAVIDSON,  
ANDREW FOULDS, JR.,  
Attorneys of Prosecutor.

To ALBERT O. MILLER, JR., Esq.,  
Attorney of Defendant.

Dated, October 23, 1914.

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# New Jersey Supreme Court

Nov. Term, 1914.

LOUIS SALERNO,

*Prosecutor*

vs.

THE CITY OF PASSAIC, ET AL,

*Defendants.*

*Opinion.*

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Submitted December 1914; decided December 1915.

I. The general language of the commission government act of 1911, P. L. p. 462, held not to confer upon municipalities adopting that act the power of regulating the traffic in intoxicating liquor.

2. The power conferred by the commission government act of 1911 of enforcement of ordinances by imposition of reasonable fine or imprisonment, does not extend to ordinances relating to the traffic in intoxicating liquor.

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On Certiorari.

Before Justices Swayze, Parker and Kalisch.

For the prosecutor, Andrew Foulds, Jr.

For the defendant, Albert O. Miller, Jr.

The opinion of the court was delivered by Parker, J.

Prosecutor was convicted in the police court of Passaic of selling beer without a license in violation of Section 1 of an ordinance of that city approved August 23, 1912, and sentenced to pay a fine of \$250. On a review of the proceedings by a judge of the Passaic County Common Pleas, pursuant to the statute of 1895, p. 764 (C. S. 408) or of 1908, p. 442 (C. S. 1868) the conviction was affirmed, and was brought here by certiorari.

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The fundamental question is whether the ordinance is authorized by law. It is concededly not authorized by the charter of Passaic City, P. L. 1873, p. 484, for by Section 26, p. 495, the penalties authorized are a fine not exceeding fifty dollars or imprisonment not exceeding ten days. The ordinance of 1912 does provide a punishment

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by a fine of \$250 for the first offence, and increased penalties for subsequent offences. To support it, the city invokes the adoption in 1911 of the commission government act, P. L. 1911, p. 462, and relies on the powers conferred by that act on all municipalities that adopt it. Reliance is also placed on the police court act of 1910, p. 117, C. S. 4005, but that act manifestly confers no powers of municipal legislation. If the ordinance can stand at all, it must do so by virtue of the commission government act. Section 8 of that act, as amended in 1912 (P. L. p. 643, 650) provides that:

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“All cities adopting the provisions of this act shall be and are hereby vested with the general powers and authority to enact and enforce by imposition of reasonable fines or by imprisonment or both all ordinances necessary for the protection of life, health and property; to declare and prevent and SUMMARILY TO ABATE NUISANCES; to preserve and enforce the good government and general welfare, order and security of such city, and shall have all powers necessary for its government not in conflict with the laws applicable to all cities of this State or the provisions of the constitution. \* \* \* \*

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“All ordinances or resolutions heretofore passed in any such cities, not inconsistent with the rights and powers herein granted, shall remain in full force and effect until altered or repealed by the Commissioners in the manner herein provided.”

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This is the portion of the act invoked by the city, and unless a power to regulate the sale of intoxicating liquor can be fairly read therein, we are relegated to the charter for that power. For the charter remains unimpaired except as altered by the act or by other general legislation. In *Salter v. Burk*, 83 N. J. L. 152, we said: “The terms of the act disclose that it was not intended in any sense to be a charter or grant of municipal power, except in a most general way. The management of municipal affairs is entrusted to a board of commissioners, but it largely leaves the mechanism of the city’s government and the provisions of the charter untouched. It does not alter general laws or charter provisions relating to the government of the

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city except when inconsistent with its provisions." So, in *Delaware River Transportation Co. v. Trenton*, 86 N. J. L., 48; 50, affirmed Id. 679, we said, "there were thus left in operation in the city all pre-existing statutes thereto applicable" and as pointed out in that case, the amending act of 1912, *supra*, emphasized this by adding at the end of section 4 this clause: "all acts general and special, relating to such city, shall, except so far as is inconsistent with this act, apply to such city, and such city shall have and exercise the powers and duties thereby imposed."

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The question, then, is whether the part of section 8 above quoted, conferring powers on the cities adopting the act, are inconsistent with the charter powers relating to intoxicating liquors. It will be observed that there is no express mention of the subject of intoxicating liquor; the subjects mentioned are the protection of life, health, and property; nuisances; the good government, welfare, order and security of the city, and generally all powers necessary for its government not in conflict with the laws applicable to all cities of this state or the provisions of the constitution. If this general language of section 8 is to be construed as covering the subject of regulating the sale of intoxicating liquors in the city, it would, as we think, be inconsistent with the charter provisions and would supersede them *pro tanto*. But we do not think that the Legislature intended this subject to be embraced within the general language conferring powers of city government. The regulation of intoxicating liquor traffic has been always dealt with by the legislature in an exceptional way. *Paul v. Gloucester*, 50 N. J. L. 585, 595. We are not aware of any instance in which a municipality has even claimed, much less been held by the courts, to be authorized to regulate the liquor traffic by virtue of mere general language conferring powers of government and preservation of order and the promotion of general welfare. Numberless cases might be cited in which the statute conferred such power in express terms. A very recent one is *Leeds v. Altreuter*, 84 N. J. L. 722. The excise commission acts (C. S. 2888, &c.) are examples of general municipal legislation of this character; and of

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the numerous special charters dealing with the subject specifically, that of Boonton (*Wilson v. Boonton*, 88 Atl. 626), Kearny (*Page v. Swithenby*, 94 Atl. 391), Gloucester (*Miner v. Larney*, 94 Atl. 26) and Passaic itself, are the latest to come under judicial examination.

10 In view of these facts, that the liquor traffic is a special subject of legislative cognizance, and up to the passage of the Commission government act always dealt with by express language, whether in general legislation or city charters, we repeat that something more than language conferring general municipal governmental powers is needed to indicate the intent of the law-making body that a municipality by adopting the act by popular vote may take to itself a general undefined control of the liquor traffic. For the power to impose "reasonable fines" conferred by the act of 1911 is coupled with the power of enactment; that is, the commission may pass an ordinance regulating a subject within the purview of the act, and prescribe a reasonable fine for its violation.

20 We consider that the power to pass ordinances regulating the liquor traffic was not conferred by the act of 1911, and hence, though it existed to a certain extent under the charter, the penalty is limited to that which was authorized by the charter, viz. ten days imprisonment or \$50 fine. A penalty of \$250 being beyond the power of the commission to prescribe in a liquor case, the conviction must be set aside.

This result makes it unnecessary to discuss the other reasons assigned.

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# New Jersey Supreme Court

LOUIS SALERNO,

*Prosecutor*

vs.

THE CITY OF PASSAIC, ET AL.,

*Defendants.*

*On Certiorari.*

## RULE FOR JUDGMENT.

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The Court having inspected the transcript and proceedings of the Court of Common Pleas of the County of Passaic, returned with the certiorari in this cause, the reasons for reversing the judgment below, and heard the argument of counsel therein, and having duly considered the same.

Do Order, that the judgment of the Court of Common Pleas of Passaic County aforesaid, be reversed, set aside, made void and for nothing holden, with costs of suit to be taxed.

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Dated December, 1915.

Entered December 30, 1915.

On motion of

WILLIAM B. DAVIDSON, and  
ANDREW FOULDS, JR.,

Attorneys for Prosecutor.

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A true copy,

WM. C. GEBHARDT,

Clerk.

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# New Jersey Supreme Court

LOUIS SALERNO,

*Prosecutor*

vs.

THE CITY OF PASSAIC, ET AL.

*Defendants.*

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## NOTICE OF APPEAL.

To Andrew Foulds, Jr., and William B. Davidson,  
Esquires, Attorneys of Prosecutor:

TAKE NOTICE that the defendant, The City of Passaic, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

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1. The New Jersey Supreme Court has improperly construed Section 8 of Chapter 221, page 462, P. L. 1911, entitled, "An Act relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within this State" as amended by Chapter 366, page 650, P. L. 1912, entitled, "An act to amend the title and body of an act entitled, "An act relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within this State" approved April twenty-fifth, one thousand nine hundred and eleven, so as to define the municipalities to which the act applies, as cities, towns, townships, boroughs, villages and municipalities governed by Boards of Commissioners or Improvement Commissions, and, further, to amend said act generally."

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2. Because the Supreme Court improperly interpreted the following part of Section 8, Chapter 366, page 650, P. L. 1912:

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"8. All cities adopting the provisions of this act shall be and are hereby vested with the general powers and authority to enact and enforce by imposition of reasonable

finer or by imprisonment or both all ordinances necessary for the protection of life, health and property; to declare and prevent and summarily to abate nuisances; to preserve and enforce the good government and general welfare, order and security of such city, and shall have all powers necessary for its government not in conflict with the laws applicable to all cities of this State or the provisions of the Constitution. \* \* \* \* .”

3. Because the Supreme Court, in the above stated cause, finding no specific mention of the word “liquor” in Chapter 221, P. L. 1911, its supplements and amendments, concluded that the said act and its supplements and amendments gave no power to the Board of Commissioners to pass ordinances relating to the liquor traffic on the ground that liquor is a special subject of legislative cognizance and that no power was conferred upon the Board of Commissioners under the aforementioned act of 1911 to regulate the liquor traffic. 10

4. Because the eighth section of Chapter 221, page 462, P. L. 1911 as amended by Chapter 366, page 650, P. L. 1912, gave the Board of Commissioners of The City of Passaic, ample power to pass the amendment of August 23, 1912, to the ordinance of July 17, 1911, entitled: “An ordinance to license and regulate the keeping of inns, taverns and beer saloons and the sale of spirituous, vinous, malt and brewed liquors in the City of Passaic, New Jersey.” 20

5. Because more appropriate language than that used in Chapter 221, P. L. 1911 and its several supplements and amendments to describe a complete obliteration of the former government of The City of Passaic and a comprehensive constitution of a new government in its stead could not have been chosen, and more complete power to pass the amendment to the liquor ordinance of The City of Passaic set aside by the New Jersey Supreme Court in this cause, could not have been granted by the Legislature than the language used in Section 8 of Chapter 221, P. L. 1911 as amended by Chapter 366, P. L. 1912, page 650. 30

6. Because section 8 of Chapter 221, P. L. 1911 as amended by Chapter 366, page 650, P. L. 1912 is the only 40

adequate power possessed by the City of Passaic to summarily abate the nuisance of selling liquor without a license in The City of Passaic.

7. Because the Legislative intent of section 8 of Chapter 221, P. L. of 1911 as amended by Chapter 366, page 650, P. L. 1912 was to give the government created under the said act full power to pass the amendment to the ordinance set aside in this cause and to pass any legislation conformable to Chapter 221, P. L. 1911, its supplements and amendments and to make the old City Charter subservient to any such legislation passed by the Board of Commissioners of The City of Passaic.

ALBERT O. MILLER, JR.,  
Attorney for the Defendant,  
The City of Passaic.

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Section 26, Chapter 414, page 484, P. L. 1873, entitled, "An Act to incorporate the City of Passaic."

26. And be it enacted, That in all cases where, by the provisions of this act, the city council have authority to pass ordinances on any subject, they may prescribe a penalty or penalties for the violation thereof, either by imprisonment not exceeding ten days, or by a fine not exceeding fifty dollars, to be recovered with costs in action of debt, in the name of the City of Passaic, for the use of said city, before any justice of the peace of said county, in which action it shall be lawful to declare generally in debt for the penalty, and to give the special matter in evidence, and if judgment in such cases shall be given against the defendant, and the same remain unpaid for five days, the said justice shall issue execution for the same, under his hand and seal, against the body of the defendant, and directed to any constable of the county, who shall execute the same in the manner and under the same liabilities as

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prescribed in case of like execution, issued by a justice of the peace under the "Act constituting courts for the trial of small causes."

*Chapter 366, page 650, section 8, P. L. 1912.*

"An Act to amend the title and body of an act entitled 'An Act relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within this State,' approved April twenty-fifth, one thousand nine hundred and eleven, so as to define the municipalities to which the act applies, as cities, towns, townships, boroughs, villages, and municipalities governed by boards of commissioners or improvement commissions, and, further, to amend said act generally.

8. All cities adopting the provisions of this act shall be and are hereby vested with the general powers and authority to enact and enforce by imposition of reasonable fines or by imprisonment or both all ordinances necessary for the protection of life, health and property; to declare and prevent and summarily to abate nuisances; to preserve and enforce the good government and general welfare, order and security of such city, and shall have all powers necessary for its government not in conflict with the laws applicable to all cities of this State or the provisions of the Constitution. PROVIDED, HOWEVER, that no ordinance or resolution increasing the net bonded indebtedness of the city to a sum in excess of fifteen per centum of the assessed valuation of all property within said city shall be valid unless the same shall be first submitted, by a special election, to the voters of the city and receive the approval of a majority of the voters actually voting at such election. The net bonded indebtedness of the city shall be determined by deducting from the total bonded indebtedness of the city all bonds of the city held in its sinking funds, and all cash or authorized investments

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other than bonds of the city held in such sinking funds, and by further deducting all bonds of the city, the payment of which is provided for in the tax levy of the current fiscal year, and all bonds issued to provide a supply of water.

All ordinances or resolutions heretofore passed in any such cities, not inconsistent with the rights and powers herein granted shall remain in full force and effect until altered or repealed by the commissioners in the manner herein provided."

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## New Jersey Court of Errors and Appeals 10

LOUIS SALERNO, Respondent,	} On Appeal from the Supreme Court.
vs.	
THE CITY OF PASSAIC, Appellant.	

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### BRIEF ON BEHALF OF RESPONDENT

#### Statement of Facts.

This is an appeal by the City of Passaic from a judgment of the Supreme Court reversing the conviction by the Police Court of that City of the respondent, Louis Salerno, who was charged with violation of a city ordinance. 30

It appears from the return of the Police Justice (pages 2-5) that the respondent, Louis Salerno, was arrested without process, by a police officer of the City of Passaic, and was tried and found guilty by the Police Justice of selling beer without a license at his restaurant in that City, in violation of the provisions of an ordinance of the City, and a fine of \$250.00 was imposed (page 5). The conviction was affirmed by the Passaic County Court of Common Pleas and was taken to the Supreme 40

10 Court by certiorari. That Court reversed the conviction and the City of Passaic appeals. The respondent contends that the ordinance under which he was convicted is invalid, that the fine imposed was greater than the penalty authorized by the City Charter, and exceeded the jurisdiction of the Police Justice; that his arrest without process was unlawful; that he was illegally deprived of the right to a trial by a jury; that the conviction was illegal and contrary to law, and that the judgment of the Supreme Court should be affirmed.

20 Respondent was charged with a violation of Section 1 of an amendment to an ordinance of the City of Passaic (approved August 23rd, 1912), entitled, "An ordinance to license and regulate the keeping of inns, taverns, beer saloons and the sale of spirituous, vinous, malt and brewed liquors in the City of Passaic, New Jersey, approved July 17th, 1911" (page 2, line 18), which provides:

30 "That it shall not be lawful for any person or persons within the limits of the City of Passaic, without a license for that purpose \* \* \* to sell \* \* \* or to cause or knowingly permit to be sold on or in the premises owned or controlled by him, \* \* \* any \* \* \* lager beer, \* \* \* in quantities less than one quart. Any person or persons violating the provisions of this section shall, upon conviction of the same be subject to a fine of two hundred and fifty dollars for the first offense \* \* \*"(page 4, line 20).

The Police Justice found that the defendant had violated the provisions of this section and imposed a fine of \$250 (page 5, line 2).

40 The City Charter of the City of Passaic authorizes a fine not exceeding \$50.00 for the violation of

a City Ordinance (P. L. 1873, page 484; State of Case, page 20, line 20).

The City asserts that power to pass the ordinance in question is derived from the Commission Government Act (P. L. 1911, Chap. 221; Amended P. L. 1912, page 643; State of Case, page 21), which has been adopted by the City of Passaic.

The Supreme Court held that this Act did not confer power to pass the ordinance, and that Court set aside the conviction (page 17, line 20), stating in its opinion that "this result makes it unnecessary to discuss the other reasons assigned" (page 16, line 28). 10

## POINTS.

### I.

#### The Grounds of Appeal. 20

The grounds of appeal are not contained in the brief or argument of appellant, and it is submitted that they cannot therefore be asserted and urged.

Briefly stated, the grounds of appeal (State of Case, pages 18-20) are (1) that the Supreme Court "improperly construed" Section 8 of the Commission Government Act; (2) that the Supreme Court "improperly interpreted" that section; (3) that the Supreme Court erred in holding that "liquor is a special subject of legislative cognizance," and that the said Act did not confer power "to regulate the liquor traffic"; (4) that the Act gave "ample power" to pass the ordinance in question; (5) that more appropriate language could not have been chosen, and more complete power could not have been granted the City by the Legislature than by the language used in the Act; (6) that the Act in question "is the only *adequate* power possessed by 30 40

the City to summarily abate the nuisance of selling liquor without a license," and (7) that "the legislative intent" was to give the City power to pass the ordinance in question.

## II.

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### **The Appellant's Brief.**

Points 1 to 5 inclusive of the brief of the appellant (Brief, pages 9-25) are confined to matters not raised by the grounds of appeal filed, and not passed upon by the Supreme Court. The Supreme Court concluded its opinion with the sentence: "This result makes it unnecessary to discuss the other reasons assigned" (page 16, line 28), referring to the questions considered by appellant in  
 20 Points 1 to 5, inclusive, and appellant acquiesced in this conclusion by omitting to make it a ground of appeal.

The sixth point of appellant's brief (Brief, page 26), raises a new question, not presented to the Supreme Court and not included in the grounds of appeal, to wit: that the ordinance in question may be sustained under the "general welfare clause" of the Commission Government Act.

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## III.

**The ordinance in question cannot be sustained under the General Welfare Clause of the Commission Government Act.**

It is submitted that this point, now raised for the first time by appellant, is not properly before the Court, and is not brought up by the grounds  
 40 of appeal filed.

By the term "general welfare clause" (Brief, page 26), it is understood that counsel for appellant refers to the clause of the Commission Government Act (P. L. 1912, page 650, Sec. 8; State of Case, page 21), which provides that cities adopting the provisions of the said Act are vested with general powers and authority "to preserve and enforce the good government and general welfare, order and security of such city" (Appellant's Brief, page 27). 10

Counsel argues that, as he considers the Charter of the City "obsolete," the Court may sustain the ordinance in question under this general clause (Appellant's Brief, page 26).

As pointed out by the Supreme Court in this case (State of Case, page 15, line 30), power to regulate the liquor traffic is not conferred by general language, conferring powers of government and the promotion of the general welfare. 20

Counsel for appellant (brief, page 30) cites four cases decided in the State of Georgia, in which a view contrary to that of our Courts is stated, and says that although power to regulate the liquor traffic is not expressly conferred by the Commission Government Act, that Act did supersede the Charter of the City to the extent of authorizing the adoption of an ordinance imposing a penalty in excess of the limitations contained in the Charter. *This contention was not presented to the Supreme Court, and is not included in the grounds of appeal.* 30

Counsel for appellant bases this point on the erroneous contention that the provision of the City Charter which confers the right to impose penalties was "obsolete" at the time of the adoption of the Commission Government Act. This view would make illegal all fines and penalties imposed in the City of Passaic for the violation of City 40

ordinances for many years preceding the adoption of the Commission Government Act. The City has collected these fines and in each case has relied upon and urged the existence and validity of the provision of the Charter under which the fines were imposed and it should not be permitted to come in at this time and urge their invalidity.

10 That counsel does not seriously urge this point is shown by the omission of any mention of it in the summary with which he closes his brief.

Section 26 of the Charter of the City of Passaic (P. L. 1873, page 484; State of Case, page 20) empowers the City, in cases where it has authority to pass ordinances on any subject, to prescribe penalties for the violation thereof, either by imprisonment not exceeding ten days, or by a fine not exceeding fifty dollars, to be recovered, with costs;

20 in an action of debt before a Justice of the Peace of the county.

By P. L. 1908, page 31, it is provided that no Justice of the Peace shall have jurisdiction over any cause cognizable before a District Court in any city in which such Court is established.

From the foregoing, appellant's counsel argues that the Charter provision above mentioned has become obsolete, but he overlooked the fact that by statute (P. L. 1886, page 199) the City Council

30 was given power to appoint a Police Justice with jurisdiction of actions to recover penalties. The Police Justice in the City of Passaic, before whom this respondent was convicted, holds his appointment by virtue of this statute.

The section of the Charter limiting the power to impose penalties for the violation of an ordinance was in full force and effect at the time the Commission Government Act was accepted by the City of Passaic. That Act provides (P. L. 1911, Chap.

40 221, Sec. 4, as amended, P. L. 1912, Chap. 366, page 649):

“The corporate existence of any city accepting the provisions of this Act shall be continued, and its corporate name and seal shall not be changed by such acceptance, and all acts, general or special, relating to such city, shall, except so far as inconsistent with this Act, apply to such city, and such city shall have and exercise the powers and duties there- 10  
by conferred or imposed.”

There is no express repealer of the provisions of the Charter of the City of Passaic, relative to the regulation of the sale of intoxicating liquors, nor of the limitation as to the penalty which the City may impose, and the provisions of the Charter in this respect are not inconsistent with the provisions of the Commission Government Act.

In *State, Miller, pros. vs. Camden*, 63 N. J. L., 20  
501, it appeared that the Charter of the City of Camden conferred upon the Common Council power to pass ordinances regulating the sale of intoxicating liquors and punishing infractions thereof by the imposition of a fine not exceeding \$100 or a term of imprisonment. By subsequent legislation, the regulation of the liquor traffic was transferred to an excise board and power given to it to “prescribe and enforce penalties either by 30  
fine or imprisonment for the violation of excise ordinances.” *Held* that a fine or term of imprisonment could not legally exceed the maximum penalty fixed by the Charter.

## IV.

**The power conferred upon cities by the Commission Government Act, to enforce ordinances by imposition of reasonable fines or imprisonment does not extend to ordinances regulating the traffic in intoxicating liquors.**

The regulation of the liquor traffic has always been dealt with by the Legislature in express language. It is a special subject of legislative cognizance, and as stated by the Court below, "something more than language conferring general municipal governmental powers is needed to indicate the intent of the law-making body that a municipality, by adopting the Act by popular vote, may take to itself a general undefined control of the liquor traffic" (page 16, line 10).

## V.

**The respondent was illegally deprived of his right to a trial by jury.**

The Supreme Court did not pass upon this question as it held that the ground upon which the case was decided made it unnecessary to discuss this point. Appellant has, however, made it the subject of its first point.

Counsel for appellant asserts that the right to a trial by jury was taken away by Section 4 of Chapter 77 of the Laws of 1910, which provides for a summary hearing in certain cases, but he has overlooked the provisions of Section 10 of the same Act (P. L. 1910, page 116), which provides:

“Proceedings instituted for the recovery of penalties for the violation of ordinances shall conform to the proceedings now followed in said Court in the city in which any action is instituted.”

At the time of the adoption of this statute, the defendant in an action to recover a penalty for a violation of an ordinance was entitled to a jury trial. 10

Greely vs. Passaic, 42 N. J. L., 429;  
Brophy vs. Perth Amboy, 15 Vr., 257;  
Harman vs. State Board, 38 Vr., 117.

## VI.

**The penalty imposed was in excess of the jurisdiction of the Police Justice.** 20

As shown above, the penalty imposed was greater than the penalty authorized by the City Charter, but it is submitted that even without this limitation, the Police Justice had no jurisdiction of a civil action to recover a penalty of \$250.00.

The statute authorizing the appointment of police justices (3 Comp. Stat., 3980, Sec. 32) provides that they shall have like power in criminal cases as justices of the peace, “but they shall not, by virtue of such office, be authorized to try any civil action except such as may be brought to recover a penalty under the provisions of this Act or any of the ordinances of the City, *in which case they may act as Justices of the Peace in their civil capacity*” (P. L. 1886, page 499, Sec. 4). 30

A Justice of the Peace has no jurisdiction of a civil action to recover \$250.00, and the Police Justice has no greater jurisdiction. 40

## VII.

**The proceeding under review was commenced illegally by summary arrest without process.**

10 The City Charter provides that penalties for the violation of a City ordinance shall be recovered in an action of debt (P. L. 1873, page 484, Sec. 26, State of Case page 20).

The statute (3 Comp. Stat., page 3981, Sec. 36) requires that the procedure, unless otherwise provided, shall be regulated, as nearly as may be, by the provisions of the Small Cause Court Act.

20 It was subsequently provided that, in cities governed by a board of commissioners, "the first process shall be either a summons or warrant in the discretion of the Magistrate" (3 Comp. Stat., 3487).

A violator of an ordinance cannot be brought into court for trial without a warrant or summons.

Newark vs. Murphy, 40 N. J. L. (11 Vr.), 145.

30 Proceedings for the recovery of penalties for the violation of city ordinances cannot be commenced by summary arrest without process.

State, Clark, pros. vs. New Brunswick, 43 N. J. L., 173.

Counsel for appellant has cited authorities holding that where a crime is committed in the presence of the officer making the arrest, no warrant is

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necessary, but in this case, the offense is not charged as a crime but merely as a violation of an ordinance.

**It is submitted that the judgment of the Supreme Court should be affirmed.**

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Respectfully submitted,

WILLIAM B. DAVIDSON,  
ANDREW FOULDS, Jr.,  
Attorneys for Respondent.

ANDREW FOULDS, Jr.,  
of Counsel.

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COMPLAINT.

(Filed Sept. 24, 1912)

POLICE COURT, CITY OF PASSAIC.

STATE OF NEW JERSEY, }  
COUNTY OF PASSAIC, } ss.

Before me, the subscriber, 10  
....., Police  
Justice of the City of Passaic,  
in said County, personally ap-

peared Benjamin F. Turner, of No. A Detective Sergeant,  
Passaic, N. J., who, being duly sworn according to law  
deposeth and saith that Louis Salerno, of No. 78 Brighton  
Ave. did on or about the 24th day of September 1912 in  
the said City of Passaic, within the corporate limits of  
the said City of Passaic, without a license for that purpose  
first had and obtained, did sell (at his place of business 20  
that of a Restaurant, at No. 78 Brighton Ave. in the City  
of Passaic, N. J.) to one Charles Papp, lager beer. In  
violation of Section One of an amendment to an Ordinance,  
(Approved August 23d, 1912) entitled "An ordinance  
to license and regulate the keeping of inns, taverns  
and beer saloons and the sale of Spirituous, Vinous, Malt  
and Brewed Liquors in the City of Passaic, New Jersey.  
Approved July 17th, 1911.

Therefore the complainant prays that the said defend- 30  
ant may be apprehended and held to answer said complaint  
and dealt with as law and justice may require.

WITNESS, Thomas P. Costello, Esq., Judge of said  
Passaic Police Court at Passaic aforesaid.

BENJ. F. TURNER,  
Complainant.

Sworn to and subscribed before me at Passaic, this 24th  
day of September, 1912.

GEO. H. RICE,  
Clerk of Police Court. 40

## RETURN BY POLICE JUSTICE.

(Filed Oct. 11, 1912).

STATE OF NEW JERSEY, }  
 COUNTY OF PASSAIC, } ss.

- 10 BE IT REMEMBERED, That on this Twenty-fourth day of September, Nineteen Hundred and Twelve, in the City of Passaic, New Jersey, Louis Salerno of 78 Brighton Avenue, Passaic, New Jersey, was brought before me, Thomas P. Costello, Police Justice of the City of Passaic, charged with selling without a license at his place of business, that of a restaurant, No. 78 Brighton Avenue, Passaic, New Jersey, lager beer, in violation of Section 1 of an amendment to an ordinance, (Approved August 23, 1912) entitled, "An Ordinance to license and regulate the keeping of inns, taverns and beer saloons and the sale
- 20 of spirituous, vinous, malt and brewed liquors in the City of Passaic, New Jersey, approved July 17, 1911," and he being represented by his counsel, William B. Davidson, requested an adjournment of said case until the twenty-fifth day of September, which was granted, and on this twenty-fifth day of September, the said Louis Salerno being again brought for trial, his attorney did demand a trial by jury. I refused the request for a trial by jury on two grounds, first, because this is a summary proceeding, secondly, the application should have been made yesterday at the time the motion for adjournment was granted
- 30 instead of waiting until the last moment. Mr. Davidson at this time stated that if he proceeded to trial that it was with the understanding that he waived none of his rights.
- 40 And it appearing by the evidence of Sergeant Benjamin Turner that on the twenty-fourth day of September, he and Sergeant Henry Crawbuck together with another man by name of Charles Papp, visited the restaurant of the defendant, Louis Salerno, and the said Charles Papp went inside and purchased a bottle of beer for five cents and the same man again in the evening went into the restaurant

and again purchased a bottle of beer for five cents and which this officer saw him so do.

And it appearing further that Sergeant Turner when he went into the place at the time the arrest was made, a man, who afterwards was identified as one Roy, was drinking a bottle of beer and that this officer took it out of his hand, the said Roy said, "Don't take that, it is mine, I paid for it."

And it appearing further by his evidence that Sergeant Turner placed the said Louis Salerno under arrest for selling liquor without a license, and brought him to the station house on the said charge. 10

And it appearing by the evidence of Sergeant Henry Crawbuck that he was with Officer Turner and saw the said Charles Papp purchase a bottle of beer on the twenty-fourth day of September, in the restaurant of Louis Salerno for five cents.

And it appearing from his evidence that the said Louis Salerno had no license to sell liquor issued by the City of Passaic. And it appearing further by the evidence of Sergeant Crawbuck that he saw Officer Turner take a bottle of beer out of the hand of the man, whom he now understands is named Roy, and who he sees in Court. He heard this man say to Sergeant Turner, "Don't take that, it is mine, I paid for it." 20

And it appearing by the evidence of Charles Papp that he visited the restaurant of Louis Salerno and purchased a bottle of beer for five cents at noon time and again purchased a bottle of beer for five cents in the evening and that he saw many men there who also purchased beer and he saw them pay for same, and he also identified two bottles of beer which he purchased and which is here offered in evidence before this Court. 30

At the close of the case, Mr. Davidson requested that the case be dismissed, first, on the ground that the City has failed to prove its ordinance. The City Counsel requested the Court to allow him to submit the ordinance which the Court allowed. This was objected to by Mr. Davidson and he requested that the complaint be dismissed upon the ground that the complaint sets out that this de- 40

defendant violated Section 1 of an amendment to a certain ordinance and that it was not an amendment to that at all. I denied the motion and allowed an exception. A recess of twenty minutes was taken at this time to enable the City Counsel to prove the ordinance. Mr. Davidson objected to further testimony on the part of the City upon the ground that the City Attorney had stated to the Court that he had closed the City's case and the City had failed to prove the ordinance. The Court allowed the ordinance to be proved and granted an exception.

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Mr. Seger, deputy City Clerk, was then sworn and produced a certain ordinance which he testified was the original ordinance. Mr. Davidson objected to the method of proving the said ordinance but I allowed same and granted an exception.

The defendant at this point closed his case and having heard the evidence, I find that the defendant did not have a license to sell liquor as prescribed by Section 1, of the ordinance which reads as follows:

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Section 1: That it shall not be lawful for any person or persons, within the limits of the City of Passaic, without a license for that purpose first had and obtained in the manner prescribed by this ordinance, to keep an inn, or tavern, or beer saloon, or to sell or expose for sale, or to cause, or knowingly permit to be sold on, or in the premises owned or controlled by him, her or them, either directly or indirectly, any wine, rum, gin, brandy, whiskey or other ardent spirits, or ale, lager beer, porter or any composition or beverage of which any of said liquors shall

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form the chief ingredient, in quantities less than one quart. Any person or persons, violating the provisions of this section, shall, upon conviction of the same, be subject to a fine of Two hundred and fifty dollars (\$250) for the first offence, three hundred and fifty dollars (\$350.00) for the second offence, and for the third offence a fine not exceeding Five hundred dollars (\$500.00) and an imprisonment not exceeding six months, or either or both, at the discretion of the Court.

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And I therefore declare that the defendant not having a license to sell liquor in the City of Passaic and that he

having violated the provision of Section 1 of the aforesaid ordinance, hereby find him guilty of said violation, he must pay a fine of Two hundred and fifty dollars.

Defendant thereupon paid the said fine of Two hundred and fifty dollars and was released.

Given under my hand and seal the day and year aforesaid.

THOMAS P. COSTELLO,  
Passaic Police Justice.

(L. S.)

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PETITION TO PASSAIC COMMON PLEAS.

Filed Oct. 4, 1912.

TO THE HONORABLE, THE JUDGE OF THE COURT OF COMMON PLEAS OF THE COUNTY OF PASSAIC.

The undersigned, your petitioner, respectfully shows, that on the 25th day of September, 1912, he was arrested by a Police Officer of the City of Passaic on a charge of selling liquor without a license, for that purpose had and obtained on the 26th day of September, he was tried and convicted and sentenced to pay a fine of Two hundred and fifty dollars.

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Your petitioner shows that said arrest, trial and conviction and sentence were illegal, for the following reasons:

1. There was no process issued for his appearance, as provided by law.
2. The complaint was defective and insufficient.
3. The defendant was denied the right of trial by jury.
4. The penalty imposed was in excess of the power of the Police Justice.
5. The judgment of the Court was invalid and contrary to law and the passage of the ordinance was not properly proven.
6. The title of the ordinance as published, was inaccurate.
7. The proceedings were not in accordance with the laws for the recoveries of penalties for violation of city ordinances.

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He therefore prays that an order may be made requiring the Police Justice of the City of Passaic, to order the said complaint warrant, proceedings and record of conviction to be forthwith brought before your Honor, that the legality of such proceedings and conviction may be reviewed and determined, and if such proceedings and conviction shall be found to be illegal, forthwith to set aside the same, &c.

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And your petitioner will ever pray, &c.

LOUIS SALERNO, by  
W. B. DAVIDSON,  
Lawyers' Bldg., Passaic, N. J.

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Verification.

## ORDER FOR HEARING.

Filed Oct. 4, 1912.

Upon reading the verified petition of Louis Salerno, in the above matter, it is on this fourth day of October, nineteen hundred and twelve, ORDERED, that Thomas P. Costello, Police Justice in the City of Passaic, return to this Court forthwith, the complaint, warrant, record, judgment and proceedings in the above matter and that Wednesday, the 9th day of October, nineteen hundred and twelve, at 10 a. m. be designated as the time at which this Court will proceed to inquire into the legality of said conviction. 10

WM. HUGHES,  
P. J.

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## DECISION OF JUDGE MARTIN,

PASSAIC COMMON PLEAS. Dec. 9, 1912.

"I have pending before me an application to set aside the conviction of Louis Salerno, in the City of Passaic, for violation of an ordinance of that city. There have been a number of reasons assigned for the setting aside of this conviction. I am unable to agree with any one of the reasons.

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I believe that the Council had a right to pass the ordinance.

I believe that the arrest of the defendant was a legal arrest, and I believe that there was evidence justifying his conviction: and so long as the penalty imposed by the court did not exceed the penalty provided by the ordinance I sustained the conviction.

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Another reason assigned was that he was entitled to trial by jury. Well, I find numerous authorities that hold that where a person is prosecuted for the violation of an ordinance that that does not give him a right to trial by jury; and so, for these various reasons, I refuse to set aside the conviction. In other words, I sustain it."

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## WRIT OF CERTIORARI.

**New Jersey Supreme Court**

NEW JERSEY, SS :

The State of New Jersey, to John J. Slater,  
(Seal) Clerk of the Passaic County Court of Common  
Pleas.

10

GREETING: We being willing for certain reasons to be certified of a certain order of the Judge of the Court of Common Pleas of the County of Passaic, made on the ninth day of December, nineteen hundred and twelve sustaining a conviction of Louis Salerno, for the violation of a certain ordinance of the City of Passaic, by the Police Justice of the City of Passaic, wherefor a fine of two hundred and fifty dollars was imposed.

WE command you that the said order of the Passaic County Court of Common Pleas with all matters touching and concerning the same as fully and entirely as before you they remain, to our Justices of our Supreme Court of Judicature, at Trenton on the Twenty-seventh day of June, nineteen hundred and thirteen, you certify and send together with this writ, that therein may be done what of right and according to the laws of this State should be done.

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Witness, William S. Gummere, Chief Justice of our Supreme Court, at Trenton aforesaid, this seventh day of June, nineteen hundred and thirteen.

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WILLIAM C. GEBHARDT,  
Clerk.

WILLIAM R. VANECEK,  
Attorney.

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## RETURN OF WRIT.

STATE OF NEW JERSEY, }  
 COUNTY OF PASSAIC, } ss:

10 I, JOHN J. SLATER, Clerk of the County of Passaic, and also Clerk of the Court of Common Pleas, in and for said County, do hereby in the schedule hereto annexed, sent to our Justices of our Supreme Court of Judicature at Trenton, the record and proceedings mentioned in the within Writ of Certiorari, with all matters touching and concerning the same, as I am within commanded.

(Seal) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, at Paterson, this Twenty-fourth day of June, A. D., Nineteen Hundred and Thirteen.

JOHN J. SLATER,  
 Clerk.

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## STIPULATION.

It is hereby stipulated that the above stated case shall be adjourned to the November term of this court with the same force and effect as though brought on for argument at the next term of court after the return of the writ.

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## REASONS.

(Filed July 5, 1913.)

TO THE JUSTICES OF THE SUPREME COURT OF THE STATE  
OF NEW JERSEY:

Louis Salerno, the said prosecutor, comes and prays that the order of the Court of Common Pleas of the County of Passaic, entered on December 9th, 1912, in the matter of the application for review of his conviction in the Police Court of the City of Passaic for the violation of Section One of an ordinance entitled "An ordinance to license and regulate the keeping of inns, taverns and beer saloons and the sale of Spirituous, Vinous, Malt and Brewed Liquors in the City of Passaic, New Jersey, approved July 17th, 1911," may be reversed and set aside for the following reasons: **10**

1. There was no process for the appearance of this defendant. **20**
2. The complaint was defective and insufficient.
3. The defendant was denied the right of trial by jury.
4. The penalty imposed was in excess of the power of the Police Justice to impose according to the charter of the City of Passaic.
5. The title of the ordinance as published was inaccurate. **30**
6. The proceedings were not in accordance with the law for the recovery of penalties for violations of city ordinances.
7. The said order was in divers other respects illegal, unjust and contrary to law.

WM. R VANECEK,  
Attorney of Prosecutor. **40**

# New Jersey Supreme Court

LOUIS SALERNO,

*Prosecutor*

vs.

THE CITY OF PASSAIC, ET AL.

*Defendants.*

*On Certiorari.*

*Notice of Argument.*

10

## NOTICE TO THE CITY OF PASSAIC.

Sir:

Take notice of the argument of the issues joined in the above entitled cause before the New Jersey Supreme Court at the State House in Trenton, on the first Tuesday in November nineteen hundred and fourteen, at the opening of court on that day, or as soon thereafter as counsel can be heard.

20

Yours, etc.,

WILLIAM B. DAVIDSON,  
ANDREW FOULDS, JR.,  
Attorneys of Prosecutor.

To ALBERT O. MILLER, JR., Esq.,  
Attorney of Defendant.

Dated, October 23, 1914.

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# New Jersey Supreme Court

Nov. Term, 1914.

LOUIS SALERNO,

*Prosecutor*

vs.

THE CITY OF PASSAIC, ET AL,

*Defendants.*

*Opinion.*

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Submitted December 1914; decided December 1915.

I. The general language of the commission government act of 1911, P. L. p. 462, held not to confer upon municipalities adopting that act the power of regulating the traffic in intoxicating liquor.

2. The power conferred by the commission government act of 1911 of enforcement of ordinances by imposition of reasonable fine or imprisonment, does not extend to ordinances relating to the traffic in intoxicating liquor.

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On Certiorari.

Before Justices Swayze, Parker and Kalisch.

For the prosecutor, Andrew Foulds, Jr.

For the defendant, Albert O. Miller, Jr.

The opinion of the court was delivered by Parker, J.

Prosecutor was convicted in the police court of Passaic of selling beer without a license in violation of Section 1 of an ordinance of that city approved August 23, 1912, and sentenced to pay a fine of \$250. On a review of the proceedings by a judge of the Passaic County Common Pleas, pursuant to the statute of 1895, p. 764 (C. S. 408) or of 1908, p. 442 (C. S. 1868) the conviction was affirmed, and was brought here by certiorari.

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The fundamental question is whether the ordinance is authorized by law. It is concededly not authorized by the charter of Passaic City, P. L. 1873, p. 484, for by Section 26, p. 495, the penalties authorized are a fine not exceeding fifty dollars or imprisonment not exceeding ten days. The ordinance of 1912 does provide a punishment

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by a fine of \$250 for the first offence, and increased penalties for subsequent offences. To support it, the city invokes the adoption in 1911 of the commission government act, P. L. 1911, p. 462, and relies on the powers conferred by that act on all municipalities that adopt it. Reliance is also placed on the police court act of 1910, p. 117, C. S. 4005, but that act manifestly confers no powers of municipal legislation. If the ordinance can stand at all, it must do so by virtue of the commission government act. Section 8 of that act, as amended in 1912 (P. L. p. 643, 650) provides that:

10

"All cities adopting the provisions of this act shall be and are hereby vested with the general powers and authority to enact and enforce by imposition of reasonable fines or by imprisonment or both all ordinances necessary for the protection of life, health and property; to declare and prevent and SUMMARILY TO ABATE NUISANCES; to preserve and enforce the good government and general welfare, order and security of such city, and shall have all powers necessary for its government not in conflict with the laws applicable to all cities of this State or the provisions of the constitution. \* \* \* \*

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"All ordinances or resolutions heretofore passed in any such cities, not inconsistent with the rights and powers herein granted, shall remain in full force and effect until altered or repealed by the Commissioners in the manner herein provided."

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This is the portion of the act invoked by the city, and unless a power to regulate the sale of intoxicating liquor can be fairly read therein, we are relegated to the charter for that power. For the charter remains unimpaired except as altered by the act or by other general legislation. In *Salter v. Burk*, 83 N. J. L. 152, we said: "The terms of the act disclose that it was not intended in any sense to be a charter or grant of municipal power, except in a most general way. The management of municipal affairs is entrusted to a board of commissioners, but it largely leaves the mechanism of the city's government and the provisions of the charter untouched. It does not alter general laws or charter provisions relating to the government of the

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city except when inconsistent with its provisions." So, in *Delaware River Transportation Co. v. Trenton*, 86 N. J. L., 48, 50, affirmed Id. 679, we said, "there were thus left in operation in the city all pre-existing statutes thereto applicable" and as pointed out in that case, the amending act of 1912, *supra*, emphasized this by adding at the end of section 4 this clause: "all acts general and special, relating to such city, shall, except so far as is inconsistent with this act, apply to such city, and such city shall have and exercise the powers and duties thereby imposed."

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The question, then, is whether the part of section 8 above quoted, conferring powers on the cities adopting the act, are inconsistent with the charter powers relating to intoxicating liquors. It will be observed that there is no express mention of the subject of intoxicating liquor; the subjects mentioned are the protection of life, health, and property; nuisances; the good government, welfare, order and security of the city, and generally all powers necessary for its government not in conflict with the laws applicable to all cities of this state or the provisions of the constitution. If this general language of section 8 is to be construed as covering the subject of regulating the sale of intoxicating liquors in the city, it would, as we think, be inconsistent with the charter provisions and would supersede them *pro tanto*. But we do not think that the Legislature intended this subject to be embraced within the general language conferring powers of city government. The regulation of intoxicating liquor traffic has been always dealt with by the legislature in an exceptional way. *Paul v. Gloucester*, 50 N. J. L. 585, 595. We are not aware of any instance in which a municipality has even claimed, much less been held by the courts, to be authorized to regulate the liquor traffic by virtue of mere general language conferring powers of government and preservation of order and the promotion of general welfare. Numberless cases might be cited in which the statute conferred such power in express terms. A very recent one is *Leeds v. Altreuter*, 84 N. J. L. 722. The excise commission acts (C. S. 2888, &c.) are examples of general municipal legislation of this character; and of

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the numerous special charters dealing with the subject specifically, that of Boonton (*Wilson v. Boonton*, 88 Atl. 626), Kearny (*Page v. Swithenby*, 94 Atl. 391), Gloucester (*Miner v. Larney*, 94 Atl. 26) and Passaic itself, are the latest to come under judicial examination.

In view of these facts, that the liquor traffic is a special subject of legislative cognizance, and up to the passage of the Commission government act always dealt with by express language, whether in general legislation or city charters, we repeat that something more than language conferring general municipal governmental powers is needed to indicate the intent of the law-making body that a municipality by adopting the act by popular vote may take to itself a general undefined control of the liquor traffic. For the power to impose "reasonable fines" conferred by the act of 1911 is coupled with the power of enactment; that is, the commission may pass an ordinance regulating a subject within the purview of the act, and prescribe a reasonable fine for its violation. We consider that the power to pass ordinances regulating the liquor traffic was not conferred by the act of 1911, and hence, though it existed to a certain extent under the charter, the penalty is limited to that which was authorized by the charter, viz. ten days imprisonment or \$50 fine. A penalty of \$250 being beyond the power of the commission to prescribe in a liquor case, the conviction must be set aside.

This result makes it unnecessary to discuss the other reasons assigned.

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# New Jersey Supreme Court

LOUIS SALERNO,

*Prosecutor*

vs.

THE CITY OF PASSAIC, ET AL.

*Defendants.*

*On Certiorari.*

## RULE FOR JUDGMENT.

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The Court having inspected the transcript and proceedings of the Court of Common Pleas of the County of Passaic, returned with the certiorari in this cause, the reasons for reversing the judgment below, and heard the argument of counsel therein, and having duly considered the same.

Do Order, that the judgment of the Court of Common Pleas of Passaic County aforesaid, be reversed, set aside, made void and for nothing holden, with costs of suit to be taxed.

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Dated December, 1915.

Entered December 30, 1915.

On motion of

WILLIAM B. DAVIDSON, and  
ANDREW FOULDS, JR.,

Attorneys for Prosecutor.

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A true copy,

WM. C. GEBHARDT,

Clerk.

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# New Jersey Supreme Court

LOUIS SALERNO,

*Prosecutor*

vs.

THE CITY OF PASSAIC, ET AL,

*Defendants.*

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## NOTICE OF APPEAL.

To Andrew Foulds, Jr., and William B. Davidson,  
Esquires, Attorneys of Prosecutor:

TAKE NOTICE that the defendant, The City of Passaic, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause, on the following grounds:

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1. The New Jersey Supreme Court has improperly construed Section 8 of Chapter 221, page 462, P. L. 1911, entitled, "An Act relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within this State" as amended by Chapter 366, page 650, P. L. 1912, entitled, "An act to amend the title and body of an act entitled, "An act relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within this State" approved April twenty-fifth, one thousand nine hundred and eleven, so as to define the municipalities to which the act applies, as cities, towns, townships, boroughs, villages and municipalities governed by Boards of Commissioners or Improvement Commissions, and, further, to amend said act generally."

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2. Because the Supreme Court improperly interpreted the following part of Section 8, Chapter 366, page 650, P. L. 1912:

"8. All cities adopting the provisions of this act shall be and are hereby vested with the general powers and authority to enact and enforce by imposition of reasonable

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finer or by imprisonment or both all ordinances necessary for the protection of life, health and property; to declare and prevent and summarily to abate nuisances; to preserve and enforce the good government and general welfare, order and security of such city, and shall have all powers necessary for its government not in conflict with the laws applicable to all cities of this State or the provisions of the Constitution. \* \* \* \* .”

3. Because the Supreme Court, in the above stated cause, finding no specific mention of the word “liquor” in Chapter 221, P. L. 1911, its supplements and amendments, concluded that the said act and its supplements and amendments gave no power to the Board of Commissioners to pass ordinances relating to the liquor traffic on the ground that liquor is a special subject of legislative cognizance and that no power was conferred upon the Board of Commissioners under the aforementioned act of 1911 to regulate the liquor traffic. **10**

4. Because the eighth section of Chapter 221, page 462, P. L. 1911 as amended by Chapter 366, page 650, P. L. 1912, gave the Board of Commissioners of The City of Passaic, ample power to pass the amendment of August 23, 1912, to the ordinance of July 17, 1911, entitled: “An ordinance to license and regulate the keeping of inns, taverns and beer saloons and the sale of spirituous, vinous, malt and brewed liquors in the City of Passaic, New Jersey.” **20**

5. Because more appropriate language than that used in Chapter 221, P. L. 1911 and its several supplements and amendments to describe a complete obliteration of the former government of The City of Passaic and a comprehensive constitution of a new government in its stead could not have been chosen, and more complete power to pass the amendment to the liquor ordinance of The City of Passaic set aside by the New Jersey Supreme Court in this cause, could not have been granted by the Legislature than the language used in Section 8 of Chapter 221, P. L. 1911 as amended by Chapter 366, P. L. 1912, page 650. **30**

6. Because section 8 of Chapter 221, P. L. 1911 as amended by Chapter 366, page 650, P. L. 1912 is the only **40**

adequate power possessed by the City of Passaic to summarily abate the nuisance of selling liquor without a license in The City of Passaic.

7. Because the Legislative intent of section 8 of Chapter 221, P. L. of 1911 as amended by Chapter 366, page 650, P. L. 1912 was to give the government created under the said act full power to pass the amendment to the ordinance set aside in this cause and to pass any legislation conformable to Chapter 221, P. L. 1911, its supplements and amendments and to make the old City Charter subservient to any such legislation passed by the Board of Commissioners of The City of Passaic.

ALBERT O. MILLER, JR.,  
Attorney for the Defendant,  
The City of Passaic.

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Section 26, Chapter 414, page 484, P. L. 1873, entitled, "An Act to incorporate the City of Passaic."

- "26. And be it enacted, That in all cases where, by the provisions of this act, the city council have authority to pass ordinances on any subject, they may prescribe a penalty or penalties for the violation thereof, either by imprisonment not exceeding ten days, or by a fine not exceeding fifty dollars, to be recovered with costs in action of debt, in the name of the City of Passaic, for the use of said city, before any justice of the peace of said county, in which action it shall be lawful to declare generally in debt for the penalty, and to give the special matter in evidence, and if judgment in such cases shall be given against the defendant, and the same remain unpaid for five days, the said justice shall issue execution for the same, under his hand and seal, against the body of the defendant, and directed to any constable of the county, who shall execute the same in the manner and under the same liabilities as

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prescribed in case of like execution, issued by a justice of the peace under the "Act constituting courts for the trial of small causes."

*Chapter 366, page 650, section 8, P. L. 1912.*

"An Act to amend the title and body of an act entitled 'An Act relating to, regulating and providing for the government of cities, towns, boroughs and other municipalities within this State,' approved April twenty-fifth, one thousand nine hundred and eleven, so as to define the municipalities to which the act applies, as cities, towns, townships, boroughs, villages, and municipalities governed by boards of commissioners or improvement commissions, and, further, to amend said act generally.

8. All cities adopting the provisions of this act shall be and are hereby vested with the general powers and authority to enact and enforce by imposition of reasonable fines or by imprisonment or both all ordinances necessary for the protection of life, health and property; to declare and prevent and summarily to abate nuisances; to preserve and enforce the good government and general welfare, order and security of such city, and shall have all powers necessary for its government not in conflict with the laws applicable to all cities of this State or the provisions of the Constitution. PROVIDED, HOWEVER, that no ordinance or resolution increasing the net bonded indebtedness of the city to a sum in excess of fifteen per centum of the assessed valuation of all property within said city shall be valid unless the same shall be first submitted, by a special election, to the voters of the city and receive the approval of a majority of the voters actually voting at such election. The net bonded indebtedness of the city shall be determined by deducting from the total bonded indebtedness of the city all bonds of the city held in its sinking funds, and all cash or authorized investments

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other than bonds of the city held in such sinking funds, and by further deducting all bonds of the city, the payment of which is provided for in the tax levy of the current fiscal year, and all bonds issued to provide a supply of water.

10 All ordinances or resolutions heretofore passed in any such cities, not inconsistent with the rights and powers herein granted shall remain in full force and effect until altered or repealed by the commissioners in the manner herein provided."

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