

Court of Errors and Appeals.

*The Board of License and Excise of
the City of Trenton,
Plaintiff in Error,*
vs.
*William H. Closson,
Defendant in Error,*

Statement.

James V. Crawford made application to the Board of License and Excise of the city of Trenton, on July 1st, 1885, to sell strong, spirituous and malt liquors at No. 138, Pennington avenue, in said city, which license was granted, notwithstanding the remonstrances, by the board, on July 15th, 1885.

William H. Closson, the prosecutor, obtained a writ of certiorari to remove the proceedings of said boards to the Supreme Court for review. The principal reason as-10 signed for setting aside this particular license is that the act of March 11th, 1880, is unconstitutional.

The Supreme Court held the act unconstitutional and ordered that said proceedings be set aside and for nothing holden. The Board of License and Excise obtained a writ of error and removed the record, judgment and proceedings of the Supreme Court here for final determination.

POINT I.

The general power of the common council to appoint such other officers as they may deem necessary for the ordering and governing of the city, and the execution of the powers and duties conferred; and the power to pass and establish such other ordinances as they may deem necessary to carry into effect the powers and duties conferred and imposed on them by the act of incorporation or any other law of this State; and such, also, for the
10 good government, order, protection of persons and property, and for the preservation of the public health and prosperity of the city, are broad and ample enough to sustain the ordinance in question.

The 35th section, subdivision IV, provides the common council shall have power within the said city to make, establish, publish and modify, amend or repeal ordinances, rules, regulations and by-laws for the following purposes:

To license and regulate restaurants, victualing houses
20 or cellars, ale and lager beer saloons or gardens, billiard tables and bowling alleys, and to prohibit the keeping of the same, except by persons duly licensed.

The 30th section provides, that the sole and exclusive power to grant licenses to persons to keep inns and taverns within said city, shall be vested in the common council, on such terms and under such limitations and regulations and restrictions as the said common council shall by ordinance impose.

The 26th section provides, that the common council
30 shall have power to make and establish such other ordinances, rules, regulations and by-laws, not contrary to the laws of this State or the United States, as they may deem necessary to carry into effect the powers and duties conferred on them by this act, or by any other law of this State, and such, also, as they may deem necessary and proper for the good government, order, protection of persons and property, and for the preservation of the public health and prosperity of said city and its inhabitants, and the same to amend, alter and repeal.

The 17th section authorizes the common council to appoint certain officers; and shall from time to time appoint such other subordinate officers as the common council deem necessary for the *ordering and governing of the city and the execution of the powers and duties conferred and imposed* upon the corporation by this act.

The 25th section, subdivisions XXXV and XXXIV, provides for the passing of ordinances to define the duties of officers and to fix the compensation to be paid to any city officer or other person employed by them for 10 any service required of him by this act, or by any ordinance or resolution passed by them not otherwise specifically provided for. (*P. L., 1874, 331.*)

It is claimed under the broad and sweeping powers conferred by the legislature upon this municipal corporation, the common council had authority to pass the ordinance in question. The rule that general legislation on a particular subject must give way to inconsistent special legislation on the same subject, does not apply to this act, as all of these sections can fairly be made to 20 harmonize. (*Volk v. Newark, 17 Vr., 119.*) The clear expression of the intention of the law-maker must be accepted as the legislative will. The court will observe that the common council are not only vested with the sole and absolute power to grant licenses to inns and taverns on such terms and under limitations, regulations and restrictions as it shall by ordinance impose, but it may pass such other ordinances as *it may deem necessary to carry into effect the powers and duties conferred and imposed* by this act, and appoint such other subordinate 30 officers as the common council deem necessary for the *ordering and governing* of the city and the *execution of the powers and duties conferred and imposed* upon the corporation by the act.

The principle that municipal powers or discretion cannot be delegated, does not prevent a corporation from appointing agents and empowering them to make contracts, nor from appointing committees and investing them with duties of a ministerial character.

Dillon on Mun. Corp., sec. 60, 374;

Burlington v. Dennison, 13 Vr., 167;
Parker v. New Brunswick, 1 Vr., 395;
State, Danforth, v. Patterson, 5 Vr., 163;
Hitchcock v. Galveston, 96 U. S., 341;
Brooklyn v. Breslin, 57 N. Y., 591;
Decorah v. Dunstan, 38 Iowa, 96;
Burlington v. Putnam Ins. Co., 31 Iowa, 102;
Clark v. City of Washington, 12 Wheat., 40;
Sandford v. Morris Com. Pleas, 7 Vr., 72;
 10 *Burlington v. Dennison*, 13 Vr., 167.

The ordinance ordains that licenses shall, on written application signed by the applicant specifying the place for which license is asked, be granted by said board to any person or persons of good moral character who shall be approved of by them, except, if it be made to appear that a majority of persons residing or owning property within the limits of one block on the line of the street wherein said hotel or saloon is proposed to be located, then said application shall be refused. (*Sections 2,*

20^{3, 4.})

The 7th section of the ordinance provides that a record of the proceedings of said board shall be kept in proper books, which said books shall, except when the said board are in session, be kept in the office of the city clerk and shall be open to the inspection of the mayor and common council and the officers of any department of the city government, when required, and subject to such other provisions as the common council may ordain.

30 The 9th section provides, that the board shall each and every month pay over to the treasurer of the city the total amount received by them for license fees during the month, and report the same to the next regular meeting of common council and at the same time present a complete statement and account, in writing, of all licenses granted by them during the month. This report is acted upon by the common council and ordered filed. It is insisted that this ordinance only clothes this
 40 board exercises no more discretion in the granting of

licenses than a board of canvassers do in passing upon the intention of the voter in canvassing votes or ballots.

The common council having acted upon the report of the board under the 9th section, it is insisted that any defect, if any there be, was then and there validated and ratified.

The only discretion conferred upon the board is the power to revoke licenses. (*Section 15.*)

The words in the second section, "and said board shall have the power to grant licenses," simply mean 10 that the board shall have power to issue certificates to persons licensed. If the ordinance is capable of two constructions, the one legal and the other illegal, the legal one should be adopted.

POINT II.

The act of March 18th, 1880, is a valid and constitutional act.

The ground upon which the alleged unconstitutionality of the act was placed, was its conflict with that clause of the constitution which prescribes the passage 20 of local or special legislation regulating the internal affairs of towns and counties.

It is alleged that there can be no reason suggested why cities with more than fifteen thousand inhabitants should have a system of granting licenses differing from that of cities with less population.

A city is but an incorporation of the people of a particular place, with power to appoint one or more officers among them. When incorporated they are constituted a body politic, and the place becomes a municipality 30 commonly called a city, borough or town corporate by the act of incorporation.

Wilcox Mun. Corp., 14 Law Lib., 9.

The legislature, previous to the adoption of the amended constitution, had incorporated the people of twenty-six particular places into municipalities, denominated cities; thirteen denominated towns; ten denomi-

nated boroughs and two villages; all of which were declared by enactment to be a body politic and corporate, in law and in fact, by the name of "The city of or the inhabitants of the city of or town, borough or village of as the case may be."

All of these municipalities have an executive officer by the name of mayor, president or chief burgess, and a legislative body called common council or board of aldermen, with power to pass ordinances for certain purposes specified in their respective charters, &c. In the main they respectively possess identical powers, differing only in minor matters. All of them, with few exceptions, have power to pass ordinances to regulate the licensing of inns and taverns, beer and ale saloons. All of them that do not possess that power are compelled to apply to the Court of Common Pleas for licenses, unless the right depends upon the popular vote of the inhabitants. Some of them possess special powers not conferred upon others, to wit, special boards, &c.

20 The act of 1880 confers no new power; it merely provides for the manner that the power already conferred may be exercised in cities containing fifteen thousand inhabitants. The act is not compulsory, and contains no repealer. It simply confers upon common councils of certain cities an additional method of exercising a power already conferred without negative words. (*Newcomb v. Franklin Township*, 17 Vr., 439.) It can exercise either method. There are cogent reasons why cities of a large population should have a system somewhat different from cities of a small population, regulating the licensing of inns and taverns, and beer and ale saloons.

30 1st. Because, while municipal corporations are called into existence at the solicitation or by the assent, actual or supposed, of the people composing them; yet the legislature determine arbitrarily the population necessary to constitute them.

Paterson v. Soc. Useful Manf., 4 Zab., 397;

Pell v. Newark, 11 Vr., 72.

2d. Because all local laws of a police nature are pred-

icated upon and bear an intimate relation to the population of a particular incorporated district.

Sanford v. Morris Common Pleas, 7 Vr., 72.

3d. Because the law in question is a police regulation, and not strictly an exercise of the law-making power.

Sanford v. Morris Common Pleas, 7 Vr., 72.

4th. Because the legislature has authority to arrange the distribution of these powers as the public exigencies may require, apportioning them to local jurisdictions, to such extent as the law-making power deems appropriate, 10 and designate or create special districts for their operations.

Potter's Dwaris on Stat., 452 ;

People v. Sheperd, 36 N. N., 286 ;

People v. Draper, 15 N. Y., 544 ;

Tiger v. Morristown, 13 Vr., 631 ;

Doughty v. Conover, 13 Vr., 193 ;

Miller v. Craig, 3 Stock., 176.

This has been the uniform policy of the State, as the general law has always exempted cities or towns cor- 20 porate from its operation, possessing rights, powers and privileges to grant licenses within their corporate boundaries.

5th. Because the selection of cities having a population of fifteen thousand for the operation of this act, is no greater exercise of arbitrary power by the legislature than in its determining the minimum of population necessary to create a municipal corporation by the name of a city or town corporate.

Pell v. Newark, 11 Vr., 72.

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6th. Because the act in question is more general than the act to regulate police departments, which authorizes some municipal corporations called cities to regulate police departments and excludes other municipalities called towns and boroughs, distinguishable only by their corporate powers, by the arbitrary nomenclature given to the body corporate by the legislature.

Hightstown v. Glenn, 18 Vr., 105.

7th. Because experience has shown that exigencies exist for cities of large population to place this power in 40

the hands of an independent board: Elizabeth, Newark, Camden and Jersey City.

Judge Reed's Opinion.

8th. Because municipalities called cities, with a population of one thousand seven hundred and fifty to fifteen thousand, do not require such a complex and expensive method of granting licenses, as municipalities called cities with a population of fifteen thousand to one hundred and thirty thousand.

10 9th. Because the legislature are the sole and arbitrary judges of the minimum of population of municipal corporations, requiring special systems of police regulations necessary to carry into effect the powers and duties conferred and imposed on this class of corporations.

10th. Because the regulation of the police power in "cities" by population is as legitimate as the regulation of the compensation of "law judges" in "counties" by population.

We are unable to see how this object could be attained
20 but by the act in question.

Skinner v. Collector, 13 Vr, 407-12.

The proviso is of no binding force and can be declared null and void without disturbing the intent or spirit of the act.

It is a general rule that subsequent statutes, which add accumulative penalties, and institute new methods of proceeding, do not repeal former penalties and methods of proceeding ordained by previous statutes without negative words. Either method can be exercised.

30 *Potter's Dwarris on Stat., 156.*

Newcomb v. Franklin Township, 17 Vr., 439.

So that the cities referred to in the opinion would not have been affected by this act if the proviso had not been attached as a part of the act.

Pell v. Newark, 11 Vr., 72.

It is a well-settled principle in the legal policy of the United States that it belongs to the judicial power, as a matter of right and of duty, to declare every act of the

legislature made in violation of the constitution, or any provision of it, null and void. (*Potter's Dwarris* 79, 365, 367.) And what is true of an act void *in toto*, is true also of any part of an act which is found to be unconstitutional, and which, consequently, is to be regarded as having never at any time possessed any legal force. (*Cooley on Const. Lim.* 188; *Morgan v. Monmouth Plank Road Co.*, 2 *Dutch.*, 99-109.) Whenever an unconstitutionality is apparent in a statute the inquiry arises, how closely such infirmity is connected with those essential 10 provisions upon which the general legislative scheme is made to depend, and if such infirmity and such provisions are separable, and after the elimination of such illegality the law can be substantially executed, the body of the act will not be held to be invalid.

State v. Kelsey, 15 *Vr.*, 1-29.

2 *Gray, Mass.*, 84-97.

The amendments with regard to cities, towns and counties did not execute themselves; they had no effect upon the existing state of things. These different bodies 20 retained all the right, powers, privileges and peculiarities which prior legislation had impressed upon them, but they could not be controlled as to their internal affairs, by future legislation except under the form of general laws; consequently, the legislative body were fully informed that a proviso of such a character as this attached to what might otherwise be considered a general law was beyond the law-making power, consequently this court would be justified in the exercise of its power and 30 duty to declare the proviso null and void, although it affected three or four municipalities within the same class. This proviso never had any existence or even the semblance of law. It was no more a part of the act than a barnacle is a part of a ship.

POINT III.

This board, whether legally appointed or elected, was, de facto, the board when the license was granted, and it is not apparent how any inquiry in this incidental proceeding, with respect to the position of this board as officers de jure, is relevant. The prayer of the prosecutor is that a certain cause may be set aside.

The common council, by virtue of the city charter and the act of 1880, possessing power to create agencies or a
10 Board of Excise to execute the powers and duties conferred on the corporation in respect to the granting of licenses, it may be proper to observe that inasmuch as this board, whether legally elected, appointed or constituted, was de facto the board when the license was granted, and it is not apparent how any inquiry in this incidental proceeding, with respect to the position of this board as officers de jure, is relevant.

State, Mitchell vs. Tolan, 4 Vr., 195.

The council having power to organize such a board by
20 ordinance, with power to grant licenses for the purpose of keeping inns and taverns, beer and ale saloons, &c., neither the title of such officers, nor the invalidity of their acts, as such, can be indirectly called in question.

State, Mitchell, v. Tolan, 4 Vr., 201.

The well-settled doctrine that a public officer de facto will, while clothed with the ostensible attributes and semblance of office, be, in legal contemplation, received as the officer de jure, would seem necessarily to carry with it the power to fill such offices as could be filled by
30 him if he were the lawful incumbent.

Bownes v. Meehan, 16 Vr., 192.

The whole matter rests in the sound discretion of the court, even where good objections to the authority of the board to act is called in question.

State, Mitchell, v. Tolan, 4 Vr., 201.

The act of April 4, 1884, (*P. L., 1884, 133*), provides that in all cities of this State it shall be lawful for the common council, by ordinance, to provide for the es-

tablishment of a Board of Excise Commissioners, to consist of five members to serve for the term of three years, &c., no more than three of whom shall belong to the same political party, &c., and no other license for such purposes, within said city, granted by any other authority, shall be lawful.

The second section provides: "No such ordinance shall be passed in any city, unless two-thirds of the members of common council shall vote therefor."

The third section provides: "Such ordinance for the 10 creation of such board shall go into effect only upon its approval by the mayor." The 5th section repeals all acts and parts of acts, general and special, inconsistent with its provisions.

The act of 1884 is similar to the act of 1880. It grants no new power to the corporation, but directs its exercise in a particular manner by ordinance. It is a general law within the meaning of the constitution, as respects the class of municipal corporations to which it applies. (*New Brunswick v. Fitzgerald*, 19 Vr., .) But it is in 20 derogation of the suffrage clause of the constitution, which provides: "Every male citizen of the United States of the age of twenty-one years * * * shall be entitled to vote for all officers that now are or hereafter may be elective by the people," &c., (*Art. II., sec. 1.*) so far as it relates to the political constitution of the board. The force of the general repealer only repeals provisions in prior special acts inconsistent therewith. (*New Brunswick v. Williams*, 15 Vr., 165.) Consequently, the power of the com- 30 mon council to create boards of excise by virtue of its charter or the act of 1880, is not disturbed. If this ordinance had been passed after the approval of the act of 1884, this court would have exercised its discretion in granting a certiorari to set aside the proceedings of the board where the public finances of the municipality were involved. (*Mitchell v. Tolan.*) The common council having already passed an ordinance creating a Board of Excise, the board is, de facto, a board. By its charter it may appoint subordinate officers for the ordering and governing and the execution of the powers and duties 40

conferred and imposed upon the corporation by this act, or by any other law of the State. By the act of 1880 it may create a Board of Excise. By the act of 1884 it may create a Board of Excise.

SAM'L G. NAAR, *Attorney.*

WM. Y. JOHNSON, *Counsel.*

NEW JERSEY
Court of Errors and Appeals.

THE BOARD OF LICENSE AND EXCISE
OF THE CITY OF TRENTON,

Plaintiffs in Error,

vs.

THE STATE, WILLIAM H. CLOSSON,
PROS.,

Defendant in Error.

In Error to
Supreme
Court.

JAMES BUCHANAN, *Attorney for Defendant in Error.*

POINTS FOR DEFENDANT IN ERROR.

This is a writ of error prosecuted by the Board of Excise of the City of Trenton, upon a judgment rendered in the Supreme Court August 4th, 1886, setting aside the proceedings of said Board in granting to one James V. Crawford a license to sell strong, spirituous and malt liquours at a certain saloon in the city of Trenton.

I.

ORGANIZATION AND POWERS OF THE BOARD.

1. The Board of License and Excise purports to be organized under, and to derive its powers from, an ordinance of the city of Trenton entitled "An ordinance to

establish a License and Excise Department," approved March 20th, 1880 (*End of Case*), and this ordinance, as appears from its preamble and provisions, purports to be an execution of a grant of power conferred by a statute entitled "An act to establish a License and Excise Department in certain cities." (*P. L. 1880, p. 191.*)

2. The Charter of the city of Trenton contains no warrant to the Common Council to delegate to, or confer upon, this Board the powers and duties which it has sought to exercise in granting the license in question. The scope of control over this subject of granting licenses to saloons, is defined by Subdivision IV. of Section 25, and by section 30 of the City Charter (*P. L. 1874, pp. 343, 349*), which provides that the *sole and exclusive power to grant licenses* "shall be vested in the Common Council on such terms and under such limitations, regulations and restrictions as the Common Council shall by their ordinance impose." *State, Marshall vs. Trenton, 7 Vr. 283, 285; State, Danforth vs. Paterson, 5 Vr. 163.* Therefore, this Board must be regarded as organized under the statute first above named (*P. L. 1880, p. 191.*)

II.

UNCONSTITUTIONALITY OF STATUTE.

1. The first reason presented to the Court below (*Case, p. 8.*) for setting aside the proceedings of the Board of License and Exise is that the act entitled "An act to establish a License and Excise Department in certain cities" (*P. L. 1880, p. 191.*) is unconstitutional and void.

The act of 1880 contravenes Article IV, Section VII, par. 11, of our State Constitution, which is in these words: "The Legislature shall not pass private, local or *special* laws in any of the following enumerated cases, that is to say: * * * Regulating the internal affairs of towns and counties; appointing local offices or commissions to regulate municipal affairs. * * * The Legislature shall pass *general* laws providing for the cases enumerated in this paragraph," &c.

(a.) The act of 1880 *is special and not general*, because it applies only to cities containing more than 15,000 inhab-

itants. Classification by population, for the purpose of determining what cities may have license and excise departments, is not a classification warranted by the Constitution. The act does not embrace all of the group of objects naturally related to the subject matter of the act. A classification which excludes from the provisions of the act Orange, with its 11,000 inhabitants, and includes New Brunswick, with its 16,000 inhabitants, is not a constitutional classification. *Hightstown vs. Glenn*, 18 Vr. 105; *Anderson vs. Trenton*, 13 Vr. 488; *Van Riper vs. Parsons*, 11 Vr. 9; *Fitzgerald vs. New Brunswick*, 18 Vr. 479.

(b.) The act is also *special and not general*, because it excludes all cities in which licenses are granted by a Board of Excise, or a Board of Excise Commissioners, or by the Court of Common Pleas. The cities containing over 15,000 inhabitants in 1880, were Camden, (where the power to grant license was in Common Council, see 12 Vr. 495,) New Brunswick, (where the power was in Common Council, see *P. L. 1871*, p. 307, sec. 7,) Paterson, (where it was in Board of Aldermen, see *P. L. 1871*, p. 819, par. VI,) Trenton, (where it was in Common Council, see *P. L. 1874*, p. 343, par. IV, and p. 349, sec. 30,) Elizabeth, (where it was in Board of Excise, see *P. L. 1870*, p. 755, sec. 3, and 17 Vr. 312,) Newark, (where it was in Excise Commissioners, see *P. L. 1875*, p. 425,) Jersey City, (where it was in Excise Commissioners, see *P. L. 1878*, p. 366,) and Hoboken, (where, I think, it was in the Court of Common Pleas).

From the eight cities above named, containing over 15,000 inhabitants in 1880, *four* were subtracted merely because licenses were granted in them by Boards of Excise, Boards of Excise Commissioners, or the Common Pleas Court. The language of the act is: "Provided, that the provisions of this act shall not apply to any city in this State in which the granting of such license is *now* vested in a Board of Excise, or Excise Commissioners, or to any city wherein the Courts of Common Pleas *now* grant licenses." These four cities can never come within the scope of the act. Such an act is not *general*, but *special*. Such classification is not based upon substantial differences. In *Hammer v. State ex rel. Richards*, 15 Vr. 670, the Court of Errors, in distinguishing

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between general and special laws, says: "How does the fact that the taxes are assessed by a Board of Assessors in one or more municipalities constitute such a difference between those municipalities and the others where taxes are assessed by individual assessors, as to warrant the Legislature in specially interfering in the affairs of the former to such an extent as it has attempted to do in the legislation under consideration? To justify separate legislation for towns or counties, there must be something in the subject matter of the enactment to call for and necessitate such separate legislation." In the case in hand, it may, with equal pertinence, be asked: How does the fact that licenses are granted in Trenton, Camden, New Brunswick and Paterson by Common Council, constitute such a difference between those cities and Elizabeth, Newark, Jersey City and Hoboken, where granted by Boards of Excise, Boards of Excise Commissioners and Common Pleas Court, as to warrant the Legislature to specially interfere in the affairs of the former to such an extent as it has attempted to do in the legislation of 1880? It may be further asked: What substantial difference is there between Trenton, Camden, New Brunswick and Paterson, on the one hand, and all the other cities of the State on the other hand, which calls for such legislation as that of 1880? In *State, Central R. R. Co. vs. Board of Assessors*, 19 Vr. 1, the Chief Justice declares that the office of the constitutional provisions in question is "to prohibit arbitrary selection as contradistinguished from classification," and that the law-maker "cannot convert a fragment of a class into a class." The act of 1880 is unconstitutional, *first*, because it arbitrarily selects cities containing more than 15,000 inhabitants from all the cities of the State; and, *second*, because of the cities thus isolated it *absolutely and forever excludes* from the provisions of the act four cities in which licenses are granted by Boards of Excise, Boards of Excise Commissioners, and the Court of Common Pleas.

The act is therefore *special* and not *general*.

2. It also regulates the internal affairs of cities. *Bingham vs. Camden*, 11 Vr. 158; *Tiger vs. Morris Common Pleas*, 13

Vr. 632; Zeigler vs. Gaddis, 15 Vr. 365; Fitzgerald vs. New Brunswick, 18 Vr. 479.

The act is, therefore, unconstitutional.

3. The Board of License and Excise had no jurisdiction. The second reason presented for setting aside the proceedings of the Board is (*Case, p. 8*) that James V. Crawford, the applicant, at the time of presenting his application for the license now in question, had a license previously granted by the Board to sell liquors at another place in the city of Trenton.

The minutes of the Board for July 1st, 1885, contain the following record: "The application of James V. Crawford was then taken up, to keep a saloon at 138 Pennington avenue. A remonstrance being presented against the same, the Board decided they had no jurisdiction, the Board being divided in opinion as to the remonstrance and their right under the ordinance to grant two licenses to the same person (the said James V. Crawford already having a license for No. 104 Market street), and the application was not granted." (*Case, p. 5, lines 12-20.*)

Before the meeting of July 1st was adjourned, the case was reconsidered, as is shown by the record in the minutes of July 1st, as follows: "Mr. Stokes moved to reconsider the action in regard to the application of James V. Crawford. Carried. Mr. Stokes also moved to lay this application over for two weeks. Agreed to." (*Case, p. 6, lines 16-19.*)

At the meeting held two weeks afterward (on July 15) the Board, seeking to avoid the question of their power to grant two licenses to the same man, first voted to transfer the license then held by James V. Crawford, at 104 Market street, to Thomas Crawford. (*Case, p. 7, lines 5, 6.*) After this action, they took up the application in question. The record in the minutes is as follows: "The application of James V. Crawford, laid over from last meeting, was taken up. After lengthy discussion as to the matter of jurisdiction (remonstrance having been presented,) on motion of Mr. Briest, the Board decided that it had jurisdiction, and granted the license." (*Case, p. 7, lines 10-15.*)

It is submitted that such decision is wrong. The ordinance (section 2) provides that the Board may grant license "to any person or persons of good moral character who shall be approved by them, permitting him or them to sell and dispose of, *at any one-named place within said city*, strong and spirituous liquors," &c. On July 1 and until July 15, James V. Crawford had a license to sell liquors at 104 Market street. On July 1 he applied for another license to sell liquors at 138 Pennington avenue. Although the Board on July 15, just before granting the license to sell at 138 Pennington avenue, transferred the license to sell at 104 Market street from James V. Crawford to Thomas Crawford, still they were bound to dispose of the case as it stood on July 1, when the application was first presented to them. The action of the Board in transferring the license to sell at 104 Market street, was a *mere device* to evade the ordinance. At the meeting on July 1 they had decided that they had no power to grant the license. *Whether that decision was right or wrong*, their subsequent action in transferring the license to sell at 104 Market street, shows that they feared the effect of granting two licenses to the same man, and that they determined, after the application was presented to them, that they would *by their own action* alter the facts of the case, and then *grant the license*. It is insisted that the final action of the Board is illegal, because, as the case stood on July 1, the Board had no power to grant, and because no subsequent alteration of the facts by the Board, the applicant, or the remonstrants, could change the case in its legal aspects.

For the reasons above given, it is respectfully submitted that the judgment of the Court below should be affirmed.

JAMES BUCHANAN,

Attorney for Defendant in Error.