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140 Md. 284, 117 A. 901

Court of Appeals of Maryland.

ENGEL

v.

MAYOR, ETC., OF CITY OF BALTIMORE.

No. 103

Jan. 13, 1922.

Appeal from Superior Court of Baltimore City;  
 James P. Gorter, Judge.

“To be officially reported.”

Suit by John N. Engel against the Mayor and City Council of the City of Baltimore. From Judgment for defendant, plaintiff appeals. Affirmed.

West Headnotes

**Intoxicating Liquors 223 ↪96**

[223k96 Most Cited Cases](#)

Under Acts 1920, c. 431, under the title to authorize and direct a refund to holders of licenses to sell intoxicating liquors in the city of Baltimore of the amount of license fees received by the city for the period from July 1, 1918, to May 1, 1920, and providing that the amount of the unused licenses for that period which had been paid to the city should be refunded, and directing the provision of a sufficient fund for that purpose, a holder of a license to sell intoxicating liquors containing more than 2 per cent. of alcohol is entitled to a refund for the part of the period specified in the statute during which his license was unused, and the fact that the holder of the license continued to sell intoxicating liquor containing less than 2 per cent. of alcohol until January 16, 1920, when the Volstead Act went into effect, did not prevent a holder of such a license from collecting such refund for the unused period.

**Intoxicating Liquors 223 ↪96**

[223k96 Most Cited Cases](#)

Under Acts 1920, c. 431, providing for a refund to holders of licenses to sell intoxicating liquors for the year May 1, 1919, to May 1, 1920, the amount of unused licenses from July 1, 1919, to May 1, 1920, a license holder who kept his license and sold liquor containing less than 2 per cent. of alcohol until January 16, 1920, when the Volstead Act went into force, may recover a proportionate amount of the license fee from January 16, 1920, regardless of the date when he surrendered the license for cancellation.

**Statutes 361 ↪211**

[361k211 Most Cited Cases](#)

Although the title of an act may be looked to, to ascertain its meaning it is no part of the act, and is not controlling.

Argued before BOYD, C. J., and THOMAS, PATTISON, URNER, ADKINS, and OFFUTT, JJ.

Isaac Lobe Straus, of Baltimore (Stephen J. McDonough, of Baltimore, on the brief), for appellant.

A. Walter Kraus, Asst. City Sol., of Baltimore (Roland R. Marchant, City Sol., of Baltimore, on the brief), for appellee.

THOMAS, J.

This appeal is from a judgment in favor of the major and city council of Baltimore in a mandamus case.

[1] On the 17th of March, 1921, John N. Engel filed a petition in the superior court of Baltimore city alleging that for a number of years prior to July 1, he was engaged in the business of selling intoxicating liquors; that he obtained a license to sell the same in Baltimore city for the year extending from May 1, 1919, to May 1, 1920, for which he paid to the clerk of the court of common pleas of Baltimore city the sum of \$1,100 as required by then existing law, and conducted his

business at Nos. 1301 and 1303 North Fulton avenue from May 1, 1919, to June 30, 1919; that by virtue of the act of Congress (41 Stat. 305) passed in pursuance of the Eighteenth Amendment of the Constitution of the United States, and under the conditions of the war with the German Empire, it became unlawful to sell intoxicating liquors in the city of Baltimore, and throughout the state of Maryland and throughout the United States, on and after July 1, 1919, and he was therefore prohibited from selling intoxicating liquors under his license, and on and after July 1, 1919, it became unused by him for the purposes for which it was issued; that the defendant is a municipal corporation; that three-fourths of the sum paid by him for said license was according to law turned over to the defendant\*902 for its municipal purposes; and that at its January session of 1920 the Legislature passed the act known as chapter 431 of the Acts of 1920, as follows:

“An act to authorize and direct the mayor and city council of Baltimore to refund to the holders of licenses to sell intoxicating liquors in the city of Baltimore, the amount of the said license fees received by said city for the period from July 1, 1919, to May 1, 1920.

Section 1. Be it enacted by the General Assembly of Maryland, that the mayor and city council of Baltimore be and they are hereby authorized and directed to refund and pay to each and every holder of a license to sell intoxicating liquors in the city of Baltimore for the year May 1, 1919, to May 1, 1920, the amount of the unused license from July 1, 1919, to May 1, 1920, which was paid to the city of Baltimore.

Sec. 2. And be it further enacted, that the mayor and city council of Baltimore be and they are hereby directed to provide in the ordinance of estimates for the year 1921 an amount sufficient to refund the unused licenses as provided for by the preceding section.

Sec. 3. And be it further enacted, that this act

shall take effect June 1, 1920.

Approved April 9, 1920.”

The petition further alleges that under the provisions of said act it became the duty of the defendant to refund to the petitioner such proportion of the whole amount paid by him and received by the defendant for said license as the portion of said year from July 1, 1919, to May 1, 1920, bears to the whole of said year extending from May 1, 1919, to May 1, 1920; that, in disregard of its duty under said chapter 431 of the Acts of 1920, the defendant has refused and still refuses to pay to the petitioner said proportionate part of the sum paid by him for said license; and that as a matter of right and justice, and in order that the intent and mandate of said act of the General Assembly may be performed and the rights of the petitioner may be secured, it is necessary for the court to intervene by a writ of mandamus directed to the defendant, requiring it to pay to the petitioner the said proportion of the entire sum paid by him for said license and received by the defendant. The petition then prayed for a writ of mandamus, directed to the defendant, requiring it to pay to the petitioner said “proportionate part \*\*\* of the entire sum paid by him for said license and received by said defendant.”

The defendant filed an answer to the petition in which it admits that the petitioner was engaged in the business of selling intoxicating liquors; that he obtained a license to sell intoxicating liquors in Baltimore city for the year beginning May 1, 1919, and ending May 1, 1920, and paid to the clerk of the court of common pleas the sum of \$1,100 for said license. The answer then alleges that the defendant denies that it became unlawful to sell intoxicating liquors in Baltimore city, etc., on and after July 1, 1919, by virtue of the provisions of the act of Congress passed in pursuance of the Eighteenth Amendment of the Constitution of the United States; that the

petitioner was prohibited by the act of Congress commonly known as the War-Time Prohibition Act from selling intoxicating liquors in Baltimore city on and after July 1, 1919, under the license issued to and paid for by him, but the defendant denies "that said license for that reason was and became incapable of being used by said petitioner or was and became unused by him as alleged in the petition." The answer further alleges that on and after July 1, 1919, there was sold in Baltimore city, etc., fermented liquors containing more than 2 per cent. by weight of alcohol, but which were not in fact intoxicating, and that liquors of this character could lawfully be sold in Baltimore city without violating any law passed by the Congress of the United States up to January 16, 1921, upon which date the act of Congress commonly known as the Volstead Act passed for the enforcement of the Eighteenth Amendment, prohibiting the sale for beverage purposes of any liquor containing more than one-half of 1 per cent. of alcohol, became operative; that, while the sale of fermented liquors of the character mentioned could be made in Baltimore city up to January 16, 1920, without violating the federal statutes, yet any sale of such liquors in Baltimore city without a license was unlawful and prohibited by the laws of the state; that the petitioner, under and by virtue of the license issued to him, sold fermented liquors containing more than 2 per cent. by weight of alcohol, but not in fact intoxicating, in Baltimore city from July 1, 1919, to January 16, 1920, and that it was not until said last-mentioned date, when it became illegal to sell such liquors by virtue of the Volstead Act, that the petitioner surrendered his license for cancellation; that the defendant admits the passage of chapter 431 of the Acts of 1920; that the defendant denies that said act imposes upon it any valid obligation to refund any portion of the license fee paid by the petitioner "because said statute is unconstitutional \*\*\* for the reason that" it is a local law, "applicable only to Baltimore city and deals with a matter covered by the express powers granted to

it by its charter, and that since the ratification of Article 11a of the Constitution of Maryland and the adoption of the charter pursuant to its provisions by the voters of Baltimore city no local law of the character here involved can constitutionally be enacted by the General Assembly"; that, assuming said statute to be constitutional, a proper construction thereof contemplates a refund to persons who procured licenses for the year beginning May 1, 1919, and ending May 1, 1920, calculated not from July 1, 1919, to May 1, 1920, but calculated from the date of the surrender and cancellation\*903 of any particular license to May 1, 1920, and that the defendant has made provision for such refund "in its ordinance of estimates for the year 1921, \*\*\* and that, in making said provision upon the basis above specified, it followed the precedent established by the state of Maryland in making similar provision for the refund of that portion of such license fees for said year received by it"; that the defendant admits that it has refused to refund to the petitioner the proportionate part of the license fee demanded by him, but denies, for the reasons stated, that such refusal has been in disregard of any duty imposed upon it by chapter 431 of the Acts of 1920; that the defendant denies that it is necessary or proper for the court to intervene, and alleges that it has discharged fully every duty it may owe to the petitioner or others who may have procured such licenses by making the provision "for refund herein referred to."

The petitioner demurred to the answer of the city, but the court overruled the demurrer, and, the petitioner having declined "to file any further pleading," etc., the court entered the judgment for the defendant from which this appeal was taken.

The petitioner avers, in substance, that he paid \$1,100 for a license to sell intoxicating liquors in Baltimore city for the year beginning May 1, 1919, and ending May 1, 1920; that by virtue of the act of Congress passed in pursuance of the

Eighteenth Amendment, “and under the conditions of the war with the German Empire,” it became unlawful to sell intoxicating liquors in Baltimore city on and after July 1, 1919, and that the General Assembly of Maryland, by chapter 431 of the Acts of 1920, directed the mayor and city council of Baltimore to refund to the appellant such proportion of the sum paid by him for said license and received by the city as the period extending from July 1, 1919, to May 1, 1920, bears to the whole year for which such license was issued. On the other hand, the defendant alleges that, while the petitioner could not lawfully sell intoxicating liquors in Baltimore city on and after July 1, 1919, he could lawfully sell in Baltimore city under his license, but not otherwise, fermented liquors containing more than 2 per cent. in weight of alcohol, provided they were not intoxicating, and that he did in fact retain and use his license for that purpose until the 16th of January, 1920, when it became illegal to sell such fermented liquors, and he surrendered his license.

Sections 667 to 668 of the revised edition of 1915 of the charter of Baltimore city required a license for the sale of fermented liquors containing more than 2 per cent. by weight of alcohol, and, the averments of the answer being admitted by the demurrer, the first question to be considered is the proper construction of chapter 431 of the Acts of 1920.

The appellant contends: (1) That the title of the act fixes the period for the refund as “from July 1, 1919, to May 1, 1920”; (2) that it declares that the refund is to be to “holders of licenses to sell intoxicating liquors,” and that “the use of the plural indicates that the refund is to be made uniformly to all holders of licenses for the period designated in the title”; (3) that the title “says nothing whatever about the time the licensee may have surrendered his license for cancellation”; and (4) that “the refund is made applicable to and for

the holders of licenses to sell intoxicating liquors, and not merely fermented liquors, demonstrating that the statute contemplates that it was for the deprivation and loss of the right to sell intoxicating liquors under the license that the refund was made, and that this compensation for such” loss was not to be forfeited by reason of the fact that the licensee retained the “minor right to sell only fermented, but not intoxicating, liquors.”

If the body of the act contained only the expressions found in the title, there would be no room to question the intention of the Legislature or the construction placed upon the act by the appellant. But section 1 of the act authorizes and directs the mayor and city council of Baltimore “to refund and pay to each and every holder of a license to sell intoxicating liquors in the city of Baltimore for the year May 1, 1919, to May 1, 1920, the amount of the unused license from July 1, 1919, to May 1, 1920, which was paid to the city,” and section 2 requires the mayor and city council to provide in the ordinance of estimates for the year 1921 an amount sufficient “to refund the unused licenses as provided by the preceding section.” Therefore what the mayor and city council were required to do in both sections of the body of the act was not, as stated in the title, to refund to “holders” of licenses the amount received by the city “for the period from July 1, 1919, to May 1, 1920,” but to refund to each and every holder of a license to sell intoxicating liquors the amount of “the unused license from July 1, 1919, to May 1, 1920, which was paid to the city of Baltimore.” The amount of the unused license from July 1, 1919, to May 1, 1920, cannot be held to mean the license fees received by the city for the entire period from July 1, 1919, to May 1, 1920, for that would require us to disregard and entirely ignore the terms “unused license” used in both sections of the act as descriptive of what the city was to refund. What the Legislature evidently meant, and what the act must be construed to mean, is that the city should

refund such portion of the license fee received by it as represented that portion of the period from July 1, 1919, to May, 1, 1920, during which the license was unused by the licensee.

[2] While the title of an act may be looked to in doubtful cases in arriving at the intention\*904 of the Legislature, it will not, as said in [State v. Archer, 73 Md. 61, 20 Atl. 174](#), “be permitted to control the express language of the act.” The argument of learned counsel for the appellant that the use of the terms “intoxicating liquors” in the act demonstrates that the Legislature intended to compensate the licensee for the loss of the right to sell intoxicating liquors, and not “fermented liquors,” would seem to be answered by the suggestion that section 667 of the city charter (Revised Edition of 1915) defined the terms “intoxicating liquors,” as used in the article providing for the licensing the sale of liquors, as including whisky, beer, etc., and all other fermented and distilled liquors, \*\*\* which should contain more than 2 per cent. in weight of alcohol,” etc., and that the Legislature in using these terms may have intended them to have the meaning given them in the city charter. Nor does the contention of the appellant find sufficient support in the provisions of the act providing for a refund in Baltimore county (chapter 169 of the Acts of 1920), for that act recites in its preamble that the holders of licenses named in the body of the act “have filed their licenses with the clerk of the circuit court for Baltimore county, and the same have been ordered canceled by the judge of said court.”

[3] We cannot adopt the construction of the act claimed by the city in its answer that the appellant was entitled to a refund only from the date upon which he surrendered his license for cancellation, for that was provided for under certain circumstances by section 690B of the city charter. But we accept the view urged by the learned counsel for the appellee in their brief that the

appellant is entitled to a refund for only that part of the year ending May 1, 1920, remaining from the date he ceased to use his license, and as the answer alleges, and the demurrer admits, that the appellant continued to use his license for the purpose of selling fermented liquors containing more than 2 per cent. by weight of alcohol, but not in fact intoxicating, from July 1, 1919, to January 16, 1920, we must hold that the refund to him by the city for his unused license must be computed from January 16, 1920. This view gives effect to all the words used in the act ([United States v. Standard Brewery Co., 251 U. S. 210, 40 Sup. Ct. 139, 64 L. Ed. 229](#)), and is apparently the one applied by the Legislature in providing for a refund “of the state's portion of unused and surrendered liquor licenses in Baltimore city.” Acts 1920, ch. 487, p. 890.

Under the construction we have given to Acts 1920, c. 431, it is not necessary to consider the other question raised by the answer of the city, and the judgment of the court below will be affirmed for the reasons we have stated.

Judgment affirmed, with costs.

Md. 1922.  
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