

275/1921
(1)
IN THE SUPERIOR COURT
OF BALTIMORE CITY.

JOHN N. ENGEL

v.

THE MAYOR AND CITY COUNCIL
OF BALTIMORE, A Municipal
Corporation.

PETITION FOR WRIT OF MANDAMUS

Mr. Clerk:

Please file, etc.

Isaac Lober Straus

Stephen J. McDough
Attorneys for Petitioner.

BOX No. 2186

- 3 -

Filed 17th Mch. 1921

Copy of the within Petition and Order of Court
served on the Mayor and City Council of Baltimore
a corporation, by service on Roland R. Marchant,
City Solicitor, on the 17th day of March, 1921
in presence of Morris Finckelstein.

Thomas J. McPurdy
Sheriff

Sept 50

No. 1934

John N. Engel
vs.

In the

M. & C. C. of Balto.

Superior Court
of Baltimore City

Mr. Clerk:

Service admitted in the above entitled case on behalf of the
Mayor and City Council of Baltimore.

Roland H. Merriam City Solicitor.

Wm. 17 1921

per R. H. Merriam.

JOHN N. ENGEL

v.

THE MAYOR AND CITY COUNCIL
OF BALTIMORE, a Municipal
Corporation.

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In the
Superior Court of
Baltimore City

TO THE HONORABLE JAMES P. GORTER, JUDGE OF SAID COURT.

The Petition of John N. Engel respectfully shows
unto your Honor:

I.

That for a number of years prior to the first day
of July, 1919, he was engaged in business in the city of
Baltimore as a seller of intoxicating liquors, and, in all
respects according to law he applied for and obtained from
the Board of Liquor License Commissioners for Baltimore City
the grant of a license to sell intoxicating liquors in the city
of Baltimore for the year extending from May 1, 1919, to May
1, 1920, with all the rights and privileges authorized and
permitted by said license; and that for said license for said
year he duly paid to the Clerk of the Court of Common Pleas
of Baltimore City the sum of Eleven Hundred Dollars (\$1100)
as provided and required by the then existing law, and that,
accordingly said license to sell intoxicating liquors in the
city of Baltimore for said year, May 1, 1919, to May 1, 1920,
was duly issued to him by the Court of Common Pleas of Balti-
more City and he became a holder of said license for said year
and conducted his said business at Nos. 1301 and 1303 North Ful-

ton avenue, in the city of Baltimore, under and by virtue of said license from said May 1, 1919, to June 30, 1919, in accordance with the authority and terms of said license.

II.

That by virtue of the provisions of an Act of the Congress of the United States passed in pursuance ~~and for the~~ ~~enforcement of~~ the Eighteenth Amendment to the Constitution *and under the conditions of the war with Germany* of the United States, it became unlawful to sell intoxicating liquors in the city of Baltimore as well as throughout the State of Maryland and the United States on and after July 1, 1919 and that, therefore, your petitioner was prohibited from selling intoxicating liquors under the license issued to and paid for by him as aforesaid on and after said last named date, and that on and after said date, to wit, July 1, 1919, the said license was and became unused by your petitioner for the purposes for which it was issued and your petitioner no longer was authorized by it to sell and did not sell intoxicating liquors thereunder on and after said last named date.

III.

That the defendant, the Mayor and City Council of Baltimore, is a municipal corporation of the State of Maryland possessed of the powers conferred upon it and exercising and required to exercise the duties imposed upon it by the Constitution and laws of the State of Maryland and that a large and substantial part, to wit, *three-fourths* ~~two-thirds~~ of the sum of money paid as

aforesaid by your petitioner for the license issued to him to sell intoxicating liquors in the City of Baltimore for said year extending from May 1, 1919, to May 1, 1920, was, by and according to law, turned over to the defendant, the Mayor and City Council of Baltimore, for its municipal purposes.

IV

That at its January Session of the year 1920, the General Assembly of Maryland passed an Act known as Chapter 431 of the Acts of the General Assembly of Maryland 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.

"SECTION 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.

"SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 1920.

"Approved April 9, 1920."

V.

Your petitioner is advised and respectfully shows that under and by virtue of the provisions of said Act it became the duty of the Mayor and City Council of Baltimore to pay and refund to your petitioner as a holder of a license to sell intoxicating liquors in the city of Baltimore for said year extending from May 1, 1919, to May 1, 1920, such proportion of the whole amount paid by your petitioner as aforesaid and received by the defendant city for said license for said year as the portion of said year extending from July 1, 1919, to May 1, 1920, bears to the whole of said year extending from May 1, 1919, to May 1, 1920, aforesaid.

VI.

That in disregard and violation of its said duty, prescribed by said Chapter 431 of the Acts of the General Assembly of 1920, above set forth, the defendant, the Mayor and City Council of Baltimore, has declined, refused and failed to refund and pay to your petitioner said proportionate part of said sum paid by him for said license as aforesaid, and received by said defendant city, and, although your petitioner has requested the same, the defendant municipal corporation still refuses and has refused and failed to refund and pay to your petitioner said proportionate part of said sum.

VII.

That as a matter of right and justice, and in order that the intent, design and mandate of said statute, to wit, said Chapter 431 of the Acts of the General Assembly of 1920, may be effectually performed, carried out and executed, and

in order that the rights of your petitioner under and by virtue of said statute may be had and secured by him, it is proper and necessary for this Honorable Court to intervene in the premises by its writ of mandamus directed to the defendant, the Mayor and City Council of Baltimore, commanding and requiring it to refund and pay to your petitioner, the said proportion aforesaid of the entire sum paid by him for said license and received by said defendant city as the period extending from July 1, 1919, to May 1, 1920, bears to the whole of said year extending from May 1, 1919, to May 1, 1920, as prescribed and required by said Act of the General Assembly of Maryland, and further requiring and ordering such other and further relief in behalf of your petitioner as may be proper and requisite in the premises.

WHEREFORE, your petitioner prays this Honorable Court to issue its writ of mandamus directed to the defendant, the Mayor and City Council of Baltimore, by service upon his Honor, William F. Broening, the Mayor of said city, at his Office in the City Hall in said city, commanding and requiring the said defendant municipal corporation to refund and pay to your petitioner such proportionate^{part} aforesaid of the entire sum paid by him for said license and received by said defendant city as the period extending from July 1, 1919, to May 1, 1920, bears to the whole of said year extending from May 1, 1919, to May 1, 1920, as prescribed and required by said Act of the General Assembly of Maryland, and further requiring and ordering such

other and further relief in behalf of your petitioner as may be proper and requisite in the premises

And as in duty, etc.

John N. Engel

John Lohr Thaus
Stephen J. Mc Donough
Attorneys for Petitioner

AFFIDAVIT

STATE OF MARYLAND, CITY OF BALTIMORE, Set.:

I HEREBY CERTIFY that on this *17th* day of March, in the year nineteen hundred and twenty-one, before me, the subscriber, a Notary Public, in and for the State and city aforesaid, personally appeared John N. Engel, the above named petitioner, and made oath in due form of law that the matters and facts set forth in the foregoing petition for a writ of mandamus, are true.

WITNESS my hand and Notarial Seal.

B. Rollins Rogers
Notary Public

ORDER OF COURT

Upon the foregoing Petition and Affidavit, it is this *17th* day of March, 1921, ORDERED by the Superior Court of Baltimore City that the mandamus prayed for in said Petition be issued and granted forthwith, unless cause to the contrary be shown by the defendant, the Mayor and City Council of Baltimore, on or before the *31st* day of March, 1921, provided, however, that a copy of said Petition and of

this Order be served upon the defendant or upon its Solicitor,
on or before the 21st day of March, 1921.

James P. Gorter

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IN THE SUPERIOR COURT OF BALTIMORE CITY

27/21
14/21

John N. Engel

Vs.

The Mayor and City Council of Baltimore, a municipal corporation.

A N S W E R

Mr. Clerk:

Please file.

Roland R Marchant
City Solicitor,
Attorney for Respondent.

Service of copy admitted this 28
day of March, 1921.

Isaac John Straus
Attorney for Plaintiff.

Filed 28 March 1921

John N. Engel :
 Vs. : In the
 The Mayor and City Council of : Superior Court of Baltimore City.
 Baltimore, a municipal corporation. :

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TO THE HONORABLE JAMES P. GORTER, JUDGE OF SAID COURT:

The answer of the Mayor and City Council of Baltimore, a municipal corporation, to the petition for mandamus of John N. Engel in this Court exhibited, respectfully shows:

1st: This respondent admits that for a number of years prior to July 1st, 1919 the petitioner was engaged in the business of selling intoxicating liquors in Baltimore City, and that he applied for and obtained from the Board of Liquor License Commissioners for Baltimore City the grant of a license to sell intoxicating liquors in Baltimore City for the year beginning May 1st, 1919 and ending May 1st, 1920. This respondent further admits that for said license the petitioner paid to the Clerk of the Court of Common Pleas of Baltimore City the sum of \$1100.00 and that upon payment of said sum said license was duly issued to him by said Clerk.

2nd: This respondent denies that it became unlawful to sell intoxicating liquors in Baltimore City as well as throughout the State of Maryland and the United States on and after July 1st, 1919 by virtue of the provisions of any Act of Congress passed in pursuance and for the enforcement of the Eighteenth Amendment to the Constitution of the United States. This respondent alleges, however, that the petitioner was prohibited by virtue of the Act of Congress commonly known as the Wartime Prohibition Act ~~and the proclamation issued pursuant thereto by the President of the United States~~ from selling intoxicating liquors in Baltimore City on and after July 1st, 1919 under the license issued to and paid for by him as aforesaid, but denies that said license for that reason was and became incapable of being used by said petitioner

MIBOC BOND

or was and became unused by him as alleged in said petition. This respondent, on the contrary, avers that on and after July 1st, 1919 there was sold in Baltimore City, as well as throughout the State of Maryland and the United States, fermented liquors containing more than 2% 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 16th, 1920, upon which date the Act of Congress commonly known as the Volstead Act passed in pursuance and for the enforcement of the Eighteenth Amendment to the Constitution of the United States and prohibiting the sale for beverage purposes of any liquor containing any more than one-half of 1% of alcohol became effective and operative throughout the United States. This respondent further says that while sales of fermented liquors of the character above specified could be made in Baltimore City up to January 16th, 1920 without violating any Federal statute, yet any sale of such liquors in Baltimore City without a license issued by the Clerk of the Court of Common Pleas of Baltimore City was unlawful and prohibited by the laws of the State of Maryland. This respondent further says that said petitioner, by virtue and under the authority of the license issued to him as aforesaid, sold fermented liquors containing more than 2% by weight of alcohol but not in fact intoxicating in Baltimore City from July 1st, 1919 to January 16th, 1920, and that it was not until said last mentioned date, after which it became illegal to sell such liquors by virtue of the provisions of the Volstead Act, that said petitioner surrendered his license for cancellation.

3rd: This respondent says that the petitioner is in error in alleging that this respondent received two-thirds of the sum of money paid by him for the license aforesaid but avers on the contrary that it was under the law entitled to receive and in point of fact did receive three-fourths of ~~said~~ ~~license fee~~ *of one thousand dollars.*

4th: This respondent admits that the General Assembly of Maryland passed and enacted the statute known as Chapter 431 of the Acts of the General Assembly of 1920, approved April 9th, 1920, which said statute is set forth

with substantial accuracy in paragraph 4 of said petition.

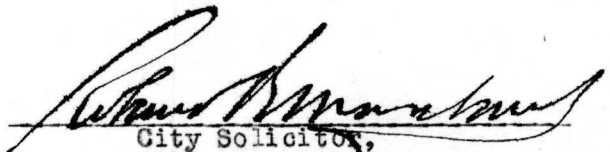
5th: This respondent denies that said statute imposes upon it any valid or binding obligation to refund to said petitioner any portion of the license fee paid by him as aforesaid because said statute is unconstitutional, illegal and void for the reason that the statute in question is a local law, applicable 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 11-A 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. Assuming the said statute to be constitutional, however, this respondent further says that a proper construction thereof contemplates a refund to said petitioner and to all other persons who procured licenses to sell intoxicating liquors in Baltimore City for the year beginning May 1st, 1919 and ending May 1st, 1920, calculated not from July 1st, 1919 to May 1st, 1920 as alleged in said petition, but calculated from the date of the surrender and cancellation of any particular license to May 1st, 1920, and that this respondent has made provision for such refund in its Ordinance of Estimates for the year 1921. This respondent further says that in making said provision for said refund in its Ordinance of Estimates for the year 1921 and in calculating the amount of said refund from the date of surrender and cancellation of any particular license to May 1st, 1920, this respondent acted without regard to and uninfluenced by the provisions of said statute of the General Assembly of Maryland, considering the same as having no binding force and effect upon it, but solely in response to the dictates of equity and justice in the premises, 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.

6th: This respondent admits that it has failed and refused to refund to said petitioner the proportionate part of said license fee demanded by him,

~~to wit, five-sixths of \$1100,~~ but it denies, for the reasons set forth in the preceding paragraph of this answer, that such failure and refusal to make said refund has been in disregard and violation of any duty imposed or sought to be imposed upon it by Chapter 431 of the Acts of the General Assembly of 1920.

7th: This respondent denies that it is necessary or proper for this Honorable Court for the reasons set forth in said petition or for any other reason whatsoever to intervene in the premises and by its writ of mandamus require and direct this respondent to pay and refund to said petitioner the proportion of said liquor license fee demanded by him, ~~to wit, five-sixths of \$1100,~~ but, on the contrary, this respondent believes that it has discharged fully every duty that it may owe to the petitioner and to others who may have procured licenses to sell intoxicating liquors in Baltimore City for the year beginning May 1st, 1919 and ending May 1st, 1920, by making the provision for refund herein referred to, and respectfully prays this Honorable Court, for the reasons in this answer mentioned, to exercise the discretion vested in it in the premises by refusing to grant the writ of mandamus and dismissing the petition praying for its issuance with costs.

And as in duty, etc.


City Solicitor,
Attorney for Respondent.


STATE OF MARYLAND,

TO WIT:

CITY OF BALTIMORE,

I HEREBY CERTIFY That on this ^{28th} day of March, in the year nineteen hundred and twenty-one, before me, the subscriber, a Notary Public of the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared William F. Broening, Mayor of Baltimore City, and he made oath in due form of law that the matters and facts set forth in the foregoing answer are true to the best of his knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.


Notary Public.



4 IN THE SUPERIOR COURT
OF BALTIMORE CITY.

27⁵/₁₉₂₁ JOHN N. ENGEL
V.

THE MAYOR AND CITY COUNCIL
OF BALTIMORE, a municipal
corporation.

DEMURRER TO ANSWER

Mr. Clerk:

Please file, etc.

Isaac Lobe Straus

Stephen J. McDonough
Attorneys for the plaintiff,

Service of copy of
within Demurrer admitted
this 29th day of March,
1921.

Noland H. Murchant
Attorney for defendant.

per N.
Fd 29 Mch 1921

JOHN N. ENGEL)
)
V.)
)
THE MAYOR AND CITY COUNCIL OF)
BALTIMORE, a municipal corporation.) OF BALTIMORE CITY.

Demurrer to Answer

John N. Engel, the plaintiff and petitioner in the above-entitled cause, demurs to the Answer heretofore filed by the defendant therein and to each and every paragraph of said Answer, and says that the whole Answer is bad in substance and defective in law and also that each and every paragraph of said Answer is bad in substance and defective in law.

John N. Engel
John P. Thomas
Stephen J. McLaughlin
Attorneys for the plaintiff, the petitioner.

AFFIDAVIT

STATE OF MARYLAND)
)
) Sct.:
CITY OF BALTIMORE)

I HEREBY CERTIFY that on this 29th day of March, 1921, before me, the subscriber, a Notary Public in and for the State and City aforesaid, personally appeared John N. Engel, the petitioner and plaintiff in the above-entitled cause, and made oath in due form of law that the foregoing Demurrer is not filed or entered for delay.

WITNESS my hand and Notarial Seal.

E. Rollins Rogers
Notary Public.

275
1921

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In the
Superior Court
of Baltimore City.

JOHN N. ENGEL

V.

THE MAYOR AND CITY COUNCIL OF
BALTIMORE, a municipal corpor-
ation.

Final Order of Court.

7th 9th Aug. 1921

Request Judge Gorter to sign

JOHN N. ENGEL

V.

THE MAYOR AND CITY COUNCIL
OF BALTIMORE, a municipal
corporation.

IN THE

SUPERIOR COURT

OF BALTIMORE CITY.

Final Order of Court

The defendant having filed its Answer to the plaintiff's Petition in the above-entitled cause, and the plaintiff having filed a Demurrer to the said Answer, and the said Demurrer having been overruled, and the plaintiff having failed to file any further or other pleading or proceeding to the said Answer and having, through his attorney of record in said cause, signified to the Court that he declines to file any further pleading or proceeding to said Answer, it is, therefore, this 9th day of August, 1921, by the Superior Court of Baltimore City, finally Ordered and Adjudged that judgment be and is hereby rendered for the defendant in said cause and that the plaintiff pay the costs, and the Clerk is hereby directed to enter such judgment for the defendant in said cause accordingly.

James P. Gorter

In the
Superior Court
of Baltimore City.

JOHN N. ENGEL

V.

THE MAYOR AND CITY COUNCIL OF
BALTIMORE, a municipal corpor-
ation.

Plaintiff's Order of Appeal.

Mr. Clerk:
Please file, etc.

Samuel John Strauss
Attorney for Plaintiff.

7th 9th Aug. 1921

JOHN N. ENGEL

V.

THE MAYOR AND CITY COUNCIL
OF BALTIMORE, a municipal
corporation.

IN THE

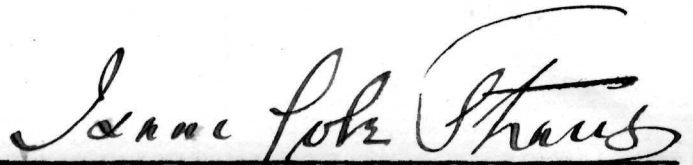
SUPERIOR COURT

OF BALTIMORE CITY.

Plaintiff's Order of Appeal

Mr. Clerk:

Enter an appeal to the Court of Appeals of Maryland,
for and on behalf of the plaintiff, from the final order and
judgment in favor of the defendant rendered by the Court on the
9th day of August, 1921, in the above-entitled cause,
and transmit the record therein forthwith to said Court of
Appeals.



Attorney for the Plaintiff.

action commenced on the 17th day of March 1921

Petition for Mandamus & Order of Court (1)

Sherriff's Return (2)

Answer of Respondent (3)
(*ft* 28 March 1921)

Declarator to Answer (4)
(*ft* 29 March 1921)

Docket Entry: 21 July 1921 Declarator to Answer occurred
if we joined that
~~9 Aug 1921 Judgment in favor of defendant
for costs~~

Order of Court (5)
(*ft* 9 Aug 1921)

Docket Entry: 9 Aug 1921 Judgment in favor of the defendant for costs.

Plaintiff's Order of Appeal (6)
(*ft* 9 Aug 1921)

275
1921

No. 103

MANDATE.

2786

Feb 14 Feb 1922

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COURT OF APPEALS OF MARYLAND

October Term, 1921

John N. Engle,

vs.

The Mayor and City Council of
Baltimore, a municipal corpor-
ation.

Appeal from the Superior Court of
Baltimore City.
1922 January 13th Judgment affirmed
with costs.
Opinion filed. Op. Thomas, J.
To be reported.

Appellant's Cost in the Court of Appeals of Maryland,

Record	\$ 25.00	
Brief		
Appearance Fee	10.00	
Clerk	<u>1.30</u>	\$ 36.30

Appellee's Cost in the Court of Appeals of Maryland,

Brief	\$ 55.00	
Appearance Fee	10.00	
Clerk	<u>1.45</u>	\$ 66.45

STATE OF MARYLAND, Sct:

I, C. C. Magruder, Clerk of the Court of Appeals of Maryland, to hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal
of the Court of Appeals, this thirteenth -----
day of February ----- A. D., 1922

C. C. Magruder Clerk
of the Court of Appeals of Maryland.