

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PAZ JOSON ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 7019. October 29, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 27th of October, 1910, the president of the municipality of Malabon of the Province of Rizal presented the following complaint in the court of the justice of the peace:

"That the said Paz Joson, Isidoro Roque, and the other above-named accused, on October 26, 1910, in the municipality of Malabon, Province of Rizal, did willfully, unlawfully, and criminally, the first as mistress of the house, the second as banker, and the rest as collectors, play the prohibited jueteng, having been caught assembled in the act. A tamboliolo with 37 balls numbered 1 to 37 successively, a book or rules of the game, numbered tickets and P17.94 in copper, nickel, and silver money, were seized as corpus delicti.

"The man called Isidoro Roque has been convicted before by this court for the same crime and therefore is a recidivist.

"An act committed with infraction of the municipal ordinance drawn up and approved on the subject."

Upon arraignment the defendants Paz Joson, Leon Dionisio, Mauricio Bagtas, Rosalio de Guzman, Telesforo Pedro, pleaded guilty of the crime charged. Isidoro Roque, Segunda Domingo, Carmen Carreon, and Priscila Carreon pleaded not guilty.

The cause proceeded to trial. After hearing the evidence, the justice of the peace, on the 14th of December, 1910, rendered the following decision and sentence:

"The evidence adduced at the trial by the prosecution does not clearly prove the participation of Segunda, Carmen, and Priscila, and does prove that of Isidoro, although as a player and not as banker.

"Therefore, I sentence the accused Leon Dionisio, Mauricio Bagtas, Rosalio de Guzman, and Telesforo Pedro to a fine of P50 as the minimum penalty fixed by the ordinances, in view of their voluntary plea of guilty; Paz Joson, as mistress of the house, to a fine of P200; and Isidoro Roque to P70; and to proportional payment of the costs of the trial, and in case of insolvency to suffer subsidiary imprisonment of one day of arrest for each peso of the fine; and I freely acquit Segunda Domingo, Carmen Carreon, and Priscila Carreon."

From that sentence the defendants Paz Joson, Isidoro Roque, Leon Dionisio, Mauricio Bagtas,[1] Rosalio de Guzman, and Telesforo Pedro appealed to the Court of First Instance. (See Record, p. 13.)

On the 18th of January, 1911, the prosecuting attorney presented the following complaint against the appellants Paz Joson, Isidoro Roque, Leon Dionisio, Rosalio de Guzman, and Telesforo Pedro:

"That the said Paz Joson et al., defendants, did on the 26th day of October, 1910, in the municipality of Malabon, Province of Rizal, P. I., the first then being the mistress of the house and manager of the game and the others players or collectors, did willfully, unlawfully, and criminally organize and carry on a game of

jueteng, making bets among themselves; an act committed in violation of the said municipal ordinance, contrary to law."

To the foregoing complaint the defendants presented a demurrer, which was overruled; whereupon the defendants Paz Joson, Leon Dionisio, Rosalio de Guzman, Telesforo Pedro, and Isidoro Roque were duly arraigned. Upon arraignment the defendants, Paz Joson, Leon Dionisio, Rosalio de Guzman, and Telesforo Pedro, declared that they were guilty of the crime charged. Isidoro Roque declared that he was not guilty of the crime charged.

The cause then proceeded to trial. At the close of the trial the Honorable Simplicio del Rosario, judge, found the defendants guilty of the crime charged, and affirmed the sentence of the justice of the peace.

From that sentence each of the defendants appealed. They alleged in this court that the ordinance under which they had been adjudged and convicted was contrary to law and unconstitutional, and therefore null and void.

In this court, the only question presented by the appellants is whether or not said Ordinance No. 1 of the municipality of Malabon, in view of the provisions of sections 3 and 7 of Act No. 1757 of the Philippine Commission, is valid and constitutional.

Said Ordinance No. 1 is as follows:

"ORDINANCE NO. 1, SERIES OF 1910.

" (5) Epifanio Evangelista, member of the council, moved that it amend the ordinance on 'prohibited games as it appears in Minute No. 51 of the special session of the council held December 28, 1907, in article 4: Provided, That this amendment shall only be applicable to the game called jueteng in the following manner:

" 'Playing jueteng is positively prohibited within the jurisdiction of this municipality, and any person violating this ordinance shall be punished in such manner that the player shall pay a fine of not less than P50 nor more than P200; the collector a fine of P50, and the master of the house and the banker each a fine of P200. In case of a second or repeated offense, the referee and collector, in addition to the fine, imprisonment of not less than four and not more than six months; the banker and master of the house, in addition to the fine, imprisonment of not less than five and not more than six months.

" 'In case of insolvency, the fine shall be extinguished by subsidiary imprisonment at the rate of P1 a day.

" 'For the purposes of this ordinance, the collectors of jueteng shall be considered all persons who collect money for betting on said game; likewise, all persons in whose possession are found slips of paper, numbered tickets, or other articles considered or useful for carrying out said game.

" 'Bankers shall be considered those who directly make the play, receive the tickets or other articles from the collectors and in whose possession are found the tambiolos and other articles for carrying out said game.

" 'Masters of the house are those whom section 6 of Act No, 1757 regards as such.'

"This motion was unanimously approved and it was also ordered that this amendment should become effective from the 15th of the present month, for its due publication in public places within the jurisdiction of this municipality.

"Approved, January 5, 1910, Res. No. 5.

"(100) On motion of the president, the council voted unanimously to approve the following amendment to Ordinance No. 1, series of 1910, with reference to the meaning to be given to the word 'collector:'

" 'For the purposes of this ordinance, a collector of jueteng shall be considered any person who collects money for betting in that game.

" 'Any person who carries, makes, or prepares a list of numbers or signs representing them shall be presumed to be a collector of jueteng.'

"Approved, March 27, 1910, Res. No. 100.

"(199) The president moved to amend Ordinance No. 1, series of 1910, with reference to the penalty for 'collector' of jueteng in the sense that such person be punished by a fine of not less than P50 nor more than P200 or imprisonment of not less than two nor more than six months.

"This motion was approved: Ayes, nine; noes, two.

"Approved, June;14, 1910, Res. No. 199."

Sections 3 and 7 of Act No. 1757 are as follows:

"SEC. 3. Gambling in a public place, or in any building, structure, vessel, or part thereof, to which the public is ordinarily admitted is hereby forbidden, and any person violating this section shall be punished by a fine of not less than ten pesos nor more than five hundred pesos or by imprisonment for not more than one year, or by both such fine and imprisonment, in the discretion of the court. In case of a second conviction both fine and imprisonment shall be imposed.

* * * * *

"SEC. 7. The playing at and the conducting of any game of monte, jueteng or any form of lottery or policy or any banking or percentage game, or the use of any mechanical invention or contrivance to determine by chance the winner or loser of money or of any representative of value or of any valuable consideration or thing, is hereby prohibited, and any person taking any part therein or owning or operating any such mechanical invention or contrivance, shall be punished as provided in section three hereof. It shall be no defense to any criminal action under this section that the defendant acted as the agent of another or that he had no interest in the result. Any person losing any money or any representative of value or any valuable consideration or thing at any such game or by means of any such mechanical invention or contrivance, or his heirs, executors, administrators, or judgment creditors, may, within three years thereafter, recover the money, consideration, or thing lost or the value thereof in a suit against the banker or the person conducting or owning such game or mechanical invention or contrivance, or against any person having any interest therein or against the person at the time in charge, control, or possession of the premises in which the loss occurred and knowingly permitting such game or the operation of such mechanical invention or contrivance, and all of such persons shall be jointly and severally liable in such action."

The plaintiffs contend that the ordinance under which they were convicted is illegal. The illegality of the ordinance is the only question which we can consider. (Section 6, Act No. 1627.) If said ordinance is valid and enforceable then they were properly convicted, for they admitted their guilt, and the appeal must be dismissed. If, upon the other hand, said ordinance is invalid, they were improperly and illegally convicted and are entitled to have the sentence of the lower court annulled.

Upon the question presented we have received very little assistance from the briefs presented. Decisions in this court in important cases are often delayed for the simple reason that little or no assistance is furnished in the briefs.

The principal contention of the appellants is that, inasmuch as the general law (Act No. 1757) provides a punishment for the acts for which they have been punished, the municipality (of Malabon) was without authority to adopt the ordinance in question, and that it is therefore invalid.

We shall first examine the charter of the said municipality (the general Municipal Code, Act No. 82 with its

amendments) for the purpose of ascertaining whether or not it had authority to adopt said ordinance. If we conclude that it had authority, we shall then consider the effect which Act No. 1757 had upon such authority. It may be noted, however, in the beginning, that the general powers of municipalities have been uniformly announced by law writers as well as by the courts to be "such powers as are expressly given by the charter and such other powers as are necessarily implied from such express powers." The same rule in effect and substance may be stated in another way, to wit: "A municipality can exercise such powers only as have been either expressly or by necessary or fair implication conferred upon it, or such as are essential to its declared objects and purposes."

Act No. 82 was adopted by the United States Philippine Commission, January 31, 1901. It was a general act for the organization of municipalities in the Philippine Islands. Said Act (No. 82) with its amendments constitutes the general charter of all the municipalities in the Philippine Islands, except the city of Manila and the settlements of the non-Christian tribes. Said Act contains the general and special powers of such municipalities. Section 39 of said Act contains the provisions relating to the general powers of the councils of said municipalities. Paragraph (u) of said section 39 gives the councils express authority "to provide against the evils of gambling, gambling houses, and disorderly houses of whatever sort" Subsection (dd) of said section 39 authorizes the councils to "fix penalties for the violation of ordinances, with the provision that no single penalty shall exceed a fine of P200 or imprisonment for six months, or both."

The municipality of Malabon, by the ordinance in question, prohibited the gambling game known as jueteng, and fixed, as the maximum penalty for a violation of the same, a fine of P200. Is the provision in the charter which authorizes the municipal councils to provide against the "evils of gambling, etc.," broad enough in its terms to justify said council in adopting ordinances prohibiting certain gambling games?

While the law writers and the courts have written long and learnedly pro and con upon the extent of such authority, we are of the opinion that authority granted to provide against the "evils of gambling, etc.," is sufficiently broad and comprehensive in its purpose to authorize the municipality to prohibit absolutely certain classes of gambling, if, in the opinion of the council, such legislation is the most effective means of providing against the "evils of gambling, etc." We believe that the general legislative authority intended to authorize the councils of municipalities to exercise a wide discretion in the method of providing against the "evils of gambling, etc.," even to the extent of prohibiting gambling absolutely. The method of providing against the "evils of gambling, etc.," was expressly left to the wisdom of the councils of the said municipalities, to be exercised in accordance with the conditions and exigencies of the particular case. It seems clear, therefore, to us that the general charter (Act No. 82 and its amendments) of the municipalities of the Philippine Islands is sufficiently broad in its provisions to authorize the municipality of Malabon, and all others, to adopt ordinances prohibiting the gambling game of jueteng and to provide a punishment, within the limitations of said charter, for a violation of said ordinances. We are strengthened in our conclusion by the fact that the Philippine Legislature, by Act No. 2212, in amending Act No. 1757, provided expressly that:

"The provisions of this section [13 of Act No. 1757, as amended by Act No. 2212] shall be applicable in cases of conviction of the violation of municipal ordinances prohibiting gambling."

Thus it appears clearly by legislative interpretation, that it was intended, by subsection (u) of section 39 of Act No. 82, to authorize municipalities to prohibit gambling in the exercise of their power to provide against the "evils of gambling, etc.," if they so desired.

Having reached the conclusion that the municipality had authority to adopt the ordinance in question it becomes necessary to examine the effect which Act No. 1757 had upon such authority, which Act also prohibited the playing at and the conducting of the game known as jueteng (sec. 7) and provided a punishment for a violation of said law. Act No. 1757 was enacted and became a law October 9, 1907. Not only did Act No. 1757 prohibit the

gambling game of jueteng and provide a punishment for its violation, but it also provided that "all Acts and parts of Acts inconsistent or in conflict with said Act, shall be repealed." Are the provisions of subsection (u) of section 39 inconsistent or in conflict with the provisions quoted above of Act No. 1757? Is a law which authorizes the municipalities of the Philippine Islands to prohibit by proper ordinances the gambling game of jueteng in conflict with the provisions of a general law which also prohibits the said gambling game of jueteng? Did the Legislature by Act No. 1757 intend to repeal the authority granted to the municipal councils to provide against the "evils of gambling?" If that is true, then the municipalities are now without authority to control gambling in any manner whatever, for that is the only provision in the charter (Act No. 82) relating to the subject. Municipal charters are general or special laws of the state (or central government) granting to the people of certain well-defined sections of the state the right of local self-government. While the state grants to such localities the right of self-government in local affairs, it does not thereby deprive itself of the right also, when the occasion demands, to interfere and enforce its own laws. The state, in granting to the municipality the right of local self-government, does not thereby deprive itself of its general powers throughout the length and breadth of the state. The charter may be either modified, amended, or repealed whenever the state deems it necessary or advisable. The municipality is simply the agent of the state and is subject, at all times, to its control. It does not seem to follow, simply because the state has seen fit to legislate upon certain subjects and to punish certain acts, that it thereby withdraws the right theretofore granted to its municipalities (its agents). Of course it is not contended that the municipality may adopt ordinances repugnant to the general laws of the state or in derogation thereof. In the present case the ordinance in question was adopted under the authority and in harmony with the express authority granted by the state and is, moreover, in exact accord with the subsequent law of the state.

The question which we are considering is not a new one. It has been discussed by law writers and the courts many times. The question of the right of the municipalities, under their charter, to adopt ordinances upon questions which the state has already or subsequently legislated upon, has been discussed by the courts of last resort in practically every State in the Union, with varying results. The question has also been discussed by the Supreme Court of the United States.

We shall examine the jurisprudence upon this question to ascertain, if possible, what the weight of authority is.

First, What is the opinion of the eminent law writers? Mr. McQuillin, one of the latest and most eminent of the authorities upon the question of municipal corporations, after a lengthy discussion and a careful examination of the authorities upon the question whether the same act may be made an offense against the state and the municipal corporations, says:

"The general doctrine is supported by the weight of judicial authority that, an act may be made a penal offense under the statutes of the state, and that further penalties may be imposed for its commission or omission by municipal ordinance."

He cites in support of his conclusion decisions from a large majority of the States of the United States, as well as of the Supreme Court of the United States. (McQuillin on Municipal Corporations, vol. 2, section 878.)

Mr. McQuillin adds: "But to authorize such ordinances, the local corporation (municipal corporation) must possess sufficient charter power, and such power must be exercised in the manner conferred and consistent with the statutes of the State."

Mr. Justice Thomas M. Cooley, one of the most eminent law writers of Anglo-Saxon jurisprudence, in discussing the question before us says: "Municipal by-laws must be in harmony with the general laws of the State, and with the provisions of the municipal charter. Whenever they come in conflict with either, the by-law (ordinance) must give way. The charter, however, may expressly or by necessary implication exclude the general laws of the State

on any particular subject and allow the corporation to pass local laws at discretion, which may differ from the rule in force elsewhere (in the State), but in these cases the control of the State is not excluded if the legislature afterwards sees fit to exercise it; nor will conferring a power upon a corporation (municipal) to pass by-laws (ordinances) and impose a penalty for the regulation of any specified subject necessarily supersede the State law on the same subject, but the State law and the by-law may both stand together, if not inconsistent. Indeed, an act may be a penal offense under the laws of the State, and further penalties, under proper legislative authority, be imposed for its commission by municipal by-laws (ordinances) and the enforcement of the one would not preclude the enforcement of the other." (Cooley's Constitutional Limitations, 6th ed., p. 239.)

Judge Cooley adds that "such is the clear weight of authority, though the decisions are not uniform."

Judge Cooley quotes from the opinion in the case of *Rogers vs. Jones* (1 Wend., N. Y., 238, 261), where it is said: "But it is said that the by-law (ordinance) of a town or corporation is void, if the legislature have regulated the subject by law. If the legislature have passed a law regulating certain things in a city, I apprehend the corporations are not thereby restricted from making further regulations. Cases of this kind have occurred and never been questioned on that ground; * * * The legislature have imposed a penalty of \$1 for servile labor on Sunday. The corporation of the city of New York have passed a by-law imposing the penalty of \$5 for the same offense. As to storing gunpowder in New York, the legislature and the corporation (of the city of New York) have each imposed the same penalty. Suits to recover the penalties have been sustained under the corporation law. It is believed that the ground has never been taken that there was a conflict with the State law."

Judge Dillon, in his work on municipal corporations (5th ed.), which has long been recognized as a standard, after a lengthy discussion and citation of authorities, fully recognizing the conflict which exists, quotes approvingly from Judge Cooley the following: "Although the decisions are not uniform, the clear weight of authority is that the same act may constitute an offense both against the State and the municipal corporation and both may punish it without violating any constitutional principle."

An examination of all the other authorities, including the work of Mr. Charles B. Elliott, formerly a member of this court, shows that they have all arrived at the same conclusion which Mr. Justice Cooley, Judge McQuillin, and Judge Dillon reached.

Second. Passing from a consideration of what the law writers have said upon the question before us, to the decisions of the courts of last resort of the different States of the Union, we find the following results;

(1) State of Alabama.—One of the leading cases upon the question which we are discussing is that of the *Mayor of Mobile vs. Allaire* (14 Ala., 400). This case is cited by practically every author who has written upon the question. The court in this case, after a statement of the facts, said:

"The object of the power conferred by the charter, and the purpose of the ordinance itself, was not to punish for an offense against the criminal justice of the country, but to provide a mere police regulation for the enforcement of good order and quiet within the limits of the corporation. So far as an offense has been committed against the public peace and morals, the corporate authorities have no power to inflict punishment, and we are not informed that they have attempted to arrogate it. It is altogether immaterial whether the state tribunal has interfered and exercised its powers in bringing the defendant before it to answer for the assault and battery, for whether he has there been punished or acquitted is alike unimportant. The offenses against the corporation and the state, we have seen, are distinguishable, and wholly disconnected, and the prosecution at the suit of each proceeds upon a different hypothesis. The one contemplates the observance of the peace and good order of the city; the other has a more enlarged object in view—the maintenance of the peace and dignity of the state."

See also *Mobile vs. Rouse*, 8 Ala., 515.

(2) *State of Arkansas*.—In the state of Arkansas a very interesting decision is found in the case of *Van Buren vs. Wells* (53 Ark., 368; 22 Am. St. Rep., 214). This case is frequently cited by law writers and the courts upon the question which we are discussing. The question presented was the validity of a city ordinance prohibiting the carrying of concealed weapons, where the State had a law covering the same-offense.

Mr. Justice Battle, speaking for the court, said: "Municipal corporations 'are bodies politic and corporate, vested with political and legislative powers for the local civil government and police regulations for the inhabitants of the particular districts included in the boundaries of the corporations.' In some respects they are local governments established by law, to assist in the civil government of the country. They are founded, in part, upon the idea that the needs of the localities for which they are organized, 'by reason of the density of population, or other circumstances, are more extensive and urgent than those of the general public in the same particulars.' Many acts are often far more injurious, while the temptations to do them are much greater in such localities than in the state generally. When done in such localities they are not only wrongs to the public at large, but are additional wrongs to the corporations. To suppress them when it can be done, and, when there is a failure to do so, to punish the guilty parties, in many cases, form a part of the duties of such corporations. Many of them can and ought to be made penal by the incorporated cities and towns, although they are already made so by the statute."

Justice Battle, in the course of his opinion, quotes approvingly from Judge Thomas M. Cooley, as follows: "Indeed, an act may be a penal offense under the laws of the State, and further penalties, under proper legislative authority, be imposed for its commission by municipal by-laws, and the enforcement of the one would not preclude the enforcement of the other. Such is the clear weight of authority, though the decisions are not uniform." (Cooley, *Const. Lim.*, 6th ed., 239.)"

(3) *State of California*.—Many cases have come before the court of last resort in the State of California in which has been discussed the question of the right of a municipality by ordinance to make an act a crime, which has already been made a crime by the general statutes of the State. (Ex parte *Chin Yan*, 60 Cal., 78; Ex parte *Casinello*, 62 Cal., 538; Ex parte *Wolters*, 65 Cal., 269; In re *Sic*, 73 Cal., 142; Ex parte *Johnson*, 73 Cal., 228; Ex parte *Campbell*, 74 Cal., 20; Ex parte *Boswell*, 86 Cal., 232; In re *Ah You*, 88 Cal., 99; Ex parte *Solomon*, 91 Cal., 440; Ex parte *Hong Shen*, 98 Cal., 681; In re *Murphy*, 128 Cal., 29; In re *Hoffman*, 155 Cal., 114.)

One of the first cases which came before the supreme court of California was the case of *Ex parte Chin Yan* (supra). In that case *Chin Yan* was convicted in the police court of the city of San Francisco of a violation of a city ordinance which made it a misdemeanor to visit a place for the practice of gambling, and was sentenced to pay a fine of \$20. The case finally came before the supreme court of the State, upon the ground: First, that the council of the city of San Francisco was without authority to pass said ordinance; and second, that said ordinance was in conflict with the constitution of the State. In reply to that argument, Mr. Justice Thornton, speaking for the court, said:

"But it is said that this order is in conflict with the law of the State on the same subject, and we are referred to section 330 of the Penal Code. It is said that this section does not make visiting a gaming house a penal offense. This may be granted, and still there is no conflict, and for the sufficient reason that section 330 of the Penal Code does not make such act an offense, does not refer to it at all, and the order does. The State Legislature can in the future legislate on the subject, and both the statute then passed and the ordinance may stand together. We find nothing in the order to conflict with the section of the Penal Code referred to."

It will be noted that in the State of California there exists a constitutional provision which provides that: "Any county, city, town, or township may make and enforce within its limits such local police, sanitary, and other

regulations as are not in conflict with general laws"

In the case of *In re Sic* (supra) the defendant was convicted of the crime "of assembling for the purpose of smoking opium, etc.," in violation of the provisions of an ordinance of the city of Stockton. The case finally reached the supreme court and the validity of the ordinance was brought into question upon the ground that it was in conflict with the State law, contrary to the provisions of the constitution of the State. The supreme court found that the ordinance was in conflict with the State law, and was therefore void under the provisions of section 11, article 11 of the State Constitution. The supreme court added, however, the following:

"It will be observed that we only hold that there is a conflict where the ordinance and the general law punish precisely the same acts. We do not wish to be understood as holding that the sections of the ordinance which make criminal other acts not punishable under the general law are void because the legislature has seen fit to legislate upon the same subject"

The right of a municipality, under proper charter authority, to adopt ordinances punishing other offenses analogous to offenses already covered by the State law is found in the case of *Ex parte Johnson* (supra). See also *Ex parte Boswell* (supra).

In the case of *Ex parte Hong Shen* (supra), the defendant was convicted under a city ordinance of the city of San Francisco, which attempted to regulate the sale of opium in said city. The question came before the supreme court of the State upon the ground that the ordinance was void for the reason that it was in conflict with the State law. In deciding the case, Mr. Justice Paterson, speaking for the court, said:

"It will be seen from the provision above referred to, that the State and the municipality have both legislated upon the same subject. The State has endeavored to regulate the sale of certain poisons, by requiring the seller to make certain inquiries and keep a certain record of facts, but it is not provided that opium cannot be sold except upon prescription of a physician furnished by the purchaser. In this respect the order of the board of supervisors goes beyond the requirement of the statute, and the question is whether or not the board have the right to so legislate upon the subject.

"There is no doubt that the municipal by-laws may stand, if not inconsistent with the State laws, and that the by-law is not necessarily void simply because the legislature has regulated the same subject by law; but it must be in harmony with the general laws of the State and with the provisions of the municipal charter,

* * * * *

"There are the very best of reasons why cities should be authorized to impose penalties in addition to those inflicted by the laws of the State. 'Particular acts may be far more injurious, while the temptation to commit them may be much greater in a crowded city than in the State generally. They consequently require more severe measures for prevention. State laws are, of course, for the general good, and cannot always answer the peculiar wants of particular localities.' (*Wood vs. City of Brooklyn*, 14 Barb., 426; see also *City vs. Kellar*, 18 Iowa, 66.)

"The offenses being different, there is no violation of the constitutional inhibition against putting one twice in jeopardy for the same offense. (*McInerney vs. City of Denver*, 17 Colo., 302; 29 Pac, 518.)"

In re Murphy, 128 Cal., 29.

One of the best illustrations of what the supreme court of California regards as constituting a conflict between a city ordinance and a State law is found in the case of *In re Hoffman* (155 Cal., 114). In that case Hoffman was arrested and convicted of a violation of an ordinance of the city of Los Angeles. The ordinance fixed the standard of milk which might be sold in the city. The ordinance required the milk offered for sale in the city should contain: Total milk solids, 12.5 per cent, by weight; butter fat, 3.5 per cent, by weight; water, 87.5 per cent, by

weight. Subsequent to the adoption of the ordinance by the city of Los Angeles, the State adopted a law which attempted to prohibit adulteration and deception in the sale of dairy products. The State statute required that it should be unlawful for any person to produce, manufacture, or prepare for sale, or to sell or offer for sale or have on hand for sale, any milk that is adulterated, within the meaning of the State law. The State law attempted to fix the standard for milk. The State law provided that milk should contain not less than 3 per cent of milk fat; and not less 8.5 per cent solids, not fat. It will be noted that under the city ordinance 12.5 per centum of the milk was required to be solids, while under the State law the requirement for solids was only 11.5. It will be seen, therefore, that the requirement under the State law was 1 per cent less than the requirement under the city ordinance; or, in other words, the city required one per cent more of milk solids as a standard for milk to be sold in the city of Los Angeles than was required under the State law. Hoffman contended that the city ordinance was void for the reason that it was in conflict with the State law. In discussing that question Mr. Justice Henshaw, speaking for the supreme court said:

"The constitution (Art. XI, sec. 11) empowers a city to make and enforce within its limits, 'all such local police, sanitary, and other regulations as are not in conflict with general laws.' It is insisted that the State, having thus provided a standard for pure milk, the attempt of the city ordinance to vary that standard creates a conflict in the law, with the necessary result that the ordinance must fall.

"Undoubtedly if such a conflict exists, the ordinance must give way to the paramount law of the State. But does such a conflict exist? For, if it does not, then it is well settled that the mere fact that the State in the exercise of the police power has made certain regulations, does not prohibit a municipality from exacting additional requirements. So long as there be no conflict between the two, and so long as the requirements of the municipal by-law are not in themselves pernicious as being unreasonable or discriminatory, both will stand. (Ex parte Hong Shen, 98 Cal., 681, 33 Pac, 799; In re Murphy, 128 Cal., 29, 60 Pac, 465; Bellingham vs. Cissna, 44 Wash., 397, 87 Pac, 481.) In the first case cited the principle is fully recognized and expounded, and assent is refused to the argument there advanced, that an ordinance is in conflict with the general laws when it makes another and different regulation for the sale of an article of commerce than that provided by the statute of the State. In the last case cited, the city of Bellingham had by ordinance declared it unlawful for an automobile to be driven on public streets at a greater speed than 6 miles per hour. Subsequently the State passed an act prohibiting the driving of automobiles 'within the thickly settled or business portion of any city at a greater speed than 12 miles an hour.' There, as here, the State law was passed subsequent to the enactment of the municipal ordinance. There, as here, a conflict between the terms was urged, but it was held, upon the soundest principles, that there was no conflict, and that it was competent for the authorities of Bellingham to prescribe a rate of speed less than that which the State law permitted. The correctness of the principle may not be doubted. If the State should pass a law declaring it unlawful to erect a chimney of a height exceeding 150 feet, would anyone seriously contend that a city of the State within the earthquake zone might not by ordinance, in the clear exercise of the police power, for the benefit of its citizens, still further restrict the height of chimneys? Such, in principle, is the present case. The legislature has in effect declared that it shall be unlawful to sell milk containing less than 11.5 per cent solids, 3 per cent of which solids shall be milk fat. An ordinance of a municipality requiring of the milk vended therein a larger percentage of solids, if not in its exactions unreasonable, does no violence to the law of the State. The State's declaration merely is that milk shall not be sold containing less than 11.5 per cent of solids, 3 per cent of which shall be milk fat. If the city of Los Angeles had provided that milk might be vended which contained less per cent of milk fats than that exacted by the State law, there would be presented a plain case of conflict. The municipality would be endeavoring to legalize that which the State had declared to be unlawful. But what the city has in fact done has been to impose not fewer but additional qualifications upon the milk which may be vended to its consumers. The State in its laws deals with all of its territory and all of its people. The exactions which it prescribes operate (except in municipal affairs) upon the people of the State, urban and rural, but it may often, and does often happen that the requirements which the State sees fit to impose may not be adequate to meet the demands

of densely populated municipalities; so that it becomes proper and even necessary for municipalities to add to State regulations provisions adapted to their special requirements. Such is the nature of the legislation here questioned."

The ordinance was held to be valid and the sentence condemning the defendant was sustained.

(4) State of Colorado.—We have found a very interesting decision in the State of Colorado. In the case of *McInerney vs. City of Denver* (17 Colo., 302), Mr. Justice Helm said:

"The legislature may undoubtedly delegate to municipal corporations power to adopt and enforce by-laws or ordinances on matters of special local importance, even though general statutes exist relating to the same subjects. An ordinance must be authorized and must not be repugnant to a statute in force over the same territorial area. But if there be no other conflict between the provisions of the statute and ordinance save that they deal with the same subject, both may be given effect. The resulting or correlative doctrine is now too uniformly established to admit of serious question that the same act may constitute two offenses, viz, a crime against the public law of the State and also a petty offense against a local municipal regulation. The weight of authority also fairly sustains the view that a prosecution and punishment for one of these offenses is no bar to a proceeding for the other; though, if it be not so provided by statute, every fairminded judge will, when pronouncing a judgment in the second transaction or proceeding, consider the penalty already suffered. Since the act constitutes two distinct offenses against separate jurisdictions, it is analogous to those cases where the same act is punishable under a Congressional statute and also under a State law. The offenses being different there is no violation of the constitutional inhibition of putting one twice in jeopardy for the same offense. These views have already, in substance, been sanctioned by this court. (*Hughes vs. People*, 8 Colo., 536.)"

Mr. Justice Helm, in support of his conclusions above quoted, cites the following authorities and cases: *Cooley's Constitutional Limitations*; *Dillon on Municipal Corporations*; *Bishop's Statutory Crimes*; *Wharton's Criminal Pleading and Practice*; *State vs. Lee* (29 Minn., 453) ; *Waldo vs. Wallace* (12 Ind., 569); *State vs. Topeka* (36 Kan., 76); *Greenwood vs. State* (6 Baxter, Tenn., 567); *Howe vs. Treasurer* (37 N. J. Law, 145); *Mayor vs. Allaire* (14 Ala., 400); *Hamilton vs. State* (3 Tex. Ap., 643); *Shafer vs. Mumma* (17 Md., 331) ; *State vs. Sly* (4 Ore., 277); *Johnson vs. State* (59 Miss., 543); *Wragg vs. Penn Township* (94 111., 11); *McLaughlin vs. Stephens* (2 Cranch, C. C. A., U. S., 148); *City vs. Cafferata* (24 Mo., 96); *Rogers vs. Jones* (1 Wend., N. Y., 238); *Cross vs. North Carolina* (132 U. S., 131).

(5) State of Florida.—Another case which is directly in point and which is cited by all law writers upon the question we are discussing is that of *Theisen vs. McDavid* (34 Fla., 440; 26 L. R. A., 234). In this case the defendant was prosecuted for a violation of a city ordinance, making it unlawful for any merchant, shopkeeper or other person to keep open a store or dispose of any wares, merchandise, etc., on Sunday. The same offense was penalized by the general law of the State, and the wording of the general law and the ordinance was practically the same. Upon a consideration of the legality of the ordinance, the court said:

"The constitutional objection urged against the propriety of the delegation of such legislative power to municipal governments is that it subjects the offender to a second jeopardy and punishment for the same offense. Some courts have sustained this view, but the overwhelming weight of the authorities, with which our views accord, support the contrary rule that there is no impropriety, from a constitutional standpoint, in clothing our municipal governments with legislative power to prohibit and punish by ordinance any act made penal by the State laws when perpetrated within municipal limits, and that it is no objection to such an ordinance that it prescribed the same penalties as the State law for the commission or omission of the same act; and that the offender may be tried and punished for the same act under both the ordinance and the State law; and that a conviction or acquittal under the one is no bar to prosecution under the other."

The municipality may, by ordinance, create an offense against municipal law out of the same act already

constituting an offense against the State law. The two are then distinct offenses, punishable by both the municipality and the State, and the conviction or acquittal by the one is no bar to prosecution and punishment by the other. (*Hunt vs. Jacksonville*, 34 Fla., 504, 43 Am. St. Rep., 214; *State vs. Walbridge*, 119 Mo., 383, 41 Am. St. Rep., 663.)

(6) State of Georgia.—In the State of Georgia the question before us has arisen and has been discussed by the supreme court in many decisions. (*Williams vs. City of Augusta*, 4 Ga., 509; *Floyd vs. Eatonton*, 14 Ga., 354; *Perdue vs. Ellis*, 18 Ga., 586; *Mayor, etc., vs. Hussey*, 21 Ga., 80; *Adams vs. Mayor, etc.*, 29 Ga., 56; *Jenkins vs. Mayor*, 35 Ga., 146; *Vason vs. City of Augusta*, 38 Ga., 542; *Karwich vs. City of Atlanta*, 44 Ga., 204; *Reich vs. State*, 53 Ga., 73; *McRea vs. Mayor, etc.*, 59 Ga., 168; *Purdy vs. State*, 68 Ga., 295; *Rothschild vs. City of Darien*, 69 Ga., 503; *DeGraffenreid vs. State*, 72 Ga., 212; *Hood vs. Von Glahn*, 88 Ga., U05; *Kahn vs. City of Macon*, 95 Ga., 419; *Strauss vs. Mayor, etc.*, 97 Ga., 475; *Keck vs. City of Gainesville*, 98 Ga., 423; *Moran vs. City of Atlanta*, 102 Ga., 840; *Aycock vs. Town of Rutledge*, 104 Ga., 533; *Grant vs. Camp*, 105 Ga., 428; *Parks vs. Nelms*, 115 Ga., 242; *Penniston vs. Newnans* 117 Ga., 700; *Littlejohn vs. Stells*, 123 Ga., 427; *Thrower vs. City of Atlanta*, 124 Ga., 1.)

We have examined said decisions in the State of Georgia and have found that in the earlier cases the discussions and conclusions were based upon the ground, not that the ordinance was in conflict with the State law, but that the charter did not authorize said ordinance—that the charter was not sufficiently broad in its provisions to justify the municipal council in adopting the particular ordinance in question. All that was said by the court, therefore, upon the question before us was mere obiter. In many of said cases the decision was by a divided court. We find, however, that the whole question was revised and decided by unanimous opinion in 1891, in the case of *Hood vs. Von Glahn* (88 Ga., 405). In this case Von Glahn was the keeper of a saloon and a retail liquor dealer. He was charged in the municipal court with the offense of keeping open his saloon on Sunday. Upon arraignment his defense was that the municipal court was without jurisdiction to try him, on the ground that the offense charged against him was a State offense and that the court, therefore, had no jurisdiction to try him. His plea of jurisdiction was overruled and after trial he was found guilty and sentenced to pay a fine of \$100 or to work ninety days on the public work. He declined to pay the fine. Upon an effort to execute the sentence, he sued out a writ of habeas corpus, alleging that he was being illegally detained, upon the ground that the municipal court was without jurisdiction to try and sentence him. The case finally reached the supreme court where it was held that Von Glahn "had no right to be discharged on habeas corpus, based on the alleged want of jurisdiction."

It appears in this case that in 1857 the legislature of the State of Georgia passed an Act which provided that the city council of the city of Augusta was empowered to pass all ordinances in relation to keeping open tippling houses on the Sabbath day in said city, as well as ordinances in relation to lewd houses or houses of ill fame, for the purpose of suppressing them. At the time this power was conferred upon the city council of the city of Augusta, there existed a general penal statute, operative throughout the State, also making it a misdemeanor to keep open a tippling house on the Sabbath day. In accordance with such legislative authority, the city council adopted an ordinance providing a punishment for keeping open tippling houses on the Sabbath day. The defendant, Von Glahri, was arrested and tried in the municipal court as above indicated.

After a statement of the facts, as above indicated, Mr. Justice Simmons, speaking for the court, said:

"The question to be determined is, whether the legislature had power to authorize the ordinance. Could the legislature authorize a municipal corporation to punish, as an offense against the municipality, an act punishable under a general law as an offense against the State? There is no decision of this court in which the question, has been directly adjudicated. Elsewhere it has frequently arisen, and has almost as frequently been decided in the affirmative. The following are cases in which the power is recognized or upheld: *Mobile vs.*

Rouse, 8 Ala., 515; Mayor vs. Allaire, 14 Ala., 400; Town of Van Buren vs. Wells, 53 Ark., 368; Hughes vs. People, 8 Colo., 536; Wragg vs. Penn Township, 94 111., 11; Robbins vs. People, 95 111., 175; Hankins vs. People, 106 111., 629, 637; Levy vs. State, 6 Ind., 281; Ambrose vs. State, id., 351; Williams vs. Warsaw, 60 Ind., 457; Town of Bloomfield vs. Trimble, 54 Iowa, 399; Rice vs. State, 3 Kan., 135; March vs. Commonwealth, 12 B. Mon. (Ky.), 25; Kemper vs. Commonwealth, 85 Ky., 219; Shafer vs. Mumma, 17 Md., 331; People vs. Hanrahan, 75 Mich., 611; People vs. Detroit, etc., Works, 82 Mich., 471; State vs. Ludwig, 21 Minn., 202; State vs. Lee, 29 Minn., 445; St. Louis vs. Bentz, 11 Mo., 61; City of St. Louis vs. Cafferata, 24 Mo., 94; State vs. Cowan, 29 Mo., 330; State vs. Thornton, 37 Mo., 360; Ex parte Kiburg, 10 Mo. App., 442; City of Brownville vs. Cook, 4 Neb., 101; Howe vs. Treasurer of Plainfield, 37 N. J. Law, 145; Wood vs. City, 14 Barb., 428, 429; City of Brooklyn vs. Toynbee, 31 Barb., 282; Polinsky vs. People, 11 Hun, 390, 73 N. Y., 65; State vs. Sly, 4 Oreg., 277; State vs. Bergman, 6 Oreg., 341; Wong vs. City of Astoria, 13 Oreg., 538; State vs. Williams, 11 S. C., 288; Greenwood vs. State, 6 Baxt, (Tenn.), 567; State ex ret Karr vs. Taxing Disk, 16 Lea, (Tenn.), 240; Hamilton vs. State, 3 Tex. App., 643; Ex parte Douglass, 1 Utah, 108."

Mr. Justice Simmons continues: "Except some early cases, which have been overruled, * * * we have found but one instance in which the power was denied (*In re Sicy* 73 Cal., 142), and there no adjudication on this point was necessary. Neither in that case nor in others holding generally that the city could not punish for acts penal under general laws, does it appear that the legislature had attempted any express grant of the power. The question for decision was as to the validity of ordinances which it seems were without express legislative sanction. There is of course a wide distinction between cases where there is a clear and well-defined grant of authority as to a specified subject, and those in which it is sought to infer authority from the 'general welfare clause' usual in municipal charters.

* * * * *

"The rule laid down in *Dillon on Municipal Corporations* (vol. 1, sec. 368, 4th ed.) is as follows:

"Where the act is, in its nature, one which constitutes two offenses, one against the State and one against the municipal government, the latter may be constitutionally authorized to punish it, though it be also an offense under the State law; but the legislative intention that this may be done ought to be manifest and unmistakable, or the power in the corporation should be held not to exist.' This we regard as a correct statement of the law."

In the Georgia cases cited as opposed to this power, it will be found that the ordinances held invalid were not shown to have been authorized by any express legislative grant. Such cases are as follows: *Mayor etc., of Savannah vs. Hussey* (21 Ga., 80); *Jenkins vs. Mayor, etc., of Thomasville* (35 Ga., 147); *Vason vs. City of Augusta* (38 Ga., 542); *Reich vs. State* (53 Ga., 73); *Rothschild vs. City of Darien* (69 Ga., 503).

While there is much obiter in many of the decisions of the State of Georgia indicating that an ordinance by the municipality in conflict with the State law is void, yet, nevertheless, we believe that from an examination of each of said decisions it will be found that Mr. Justice Simmons is correct in his statement made in the case of *Hood vs. Von Glahn* that "there is no decision of this court in which the question has been directly adjudicated."

(7) *State of Idaho*.—A very interesting decision is found in the case of the *State vs. Preston* (4 Idaho, 215; 38 Pac, 694). In this case the defendant was arrested on a complaint filed by the chief of police of the city of Pocatello, charging him with violating a city ordinance, defining vagrancy and prescribing a punishment therefor. The defendant was tried in the municipal court and convicted. He appealed to the court of first instance (district court) where he was again found guilty of a violation of a city ordinance and sentenced to pay a fine. From the latter sentence he appealed to the supreme court of the State. In the supreme court the defendant contended that municipalities could not punish for vagrancy, for the reason that said crime was punishable under the State law, citing in support of his contention the case of *In re Sic* (73 Cal., 142). The supreme court of the State, through Mr.

Justice Sullivan, in a carefully prepared opinion in which he considers many cases, pro and con, reached the conclusion that: "Municipal corporations may pass ordinances for the punishment of and may punish for the same acts as are punishable under the penal code of the State, when authorized so to do by the law under which said towns and villages are organized."

Mr. Justice Sullivan cites in support of his argument: *Dillon on Municipal Corporations*; *McPherson vs. Village of Chebanse* (114 111., 46); *St. Johnsbury vs. Thompson* (59 Vt., 300) ; *Greenwood vs. State* (6 Baxt., Tenn., 567); *State vs. Clarke* (54 Mo., 17); *Hamilton vs. State* (3 Tex. App., 643); *State vs. Bergman* (6 Ore., 341); *State vs. Mayor, etc.* (33 N. J. L., 57); *Bishop's Statutory Crimes*; *Cooley's Constitutional Limitations*.

(8) *State of Illinois*.—Many cases supporting the contention which we make are found in the State of Illinois. In the case of *Hankins vs. People* (106 HI., 628), Mr. Justice Walker, speaking for the court, said:

"It is next urged that the legislature having conferred power on the city of Chicago to suppress gaming houses and it having assumed the power and passed ordinances for that purpose, the court had no jurisdiction to try the case; that when a proceeding was had under a city ordinance a judgment for the breach of the ordinance was an end of the case and there was no power to prosecute under the general law for this offense (for keeping a gaming house contrary to the provisions of the statute); that the legislature may rightfully declare the same act to be two offenses and to be punished as such has long been the settled law of this State. In the case of *Frieland vs. People* (16 111., 380) it was held that where one was tried and convicted for an assault and battery, when indicted with others for a riot in committing the act for which he had been convicted, that conviction was no bar to a prosecution for riot, as the act committed included two offenses. In the case of *Severin vs. People* (37 111., 414) it was held that for an assault with a deadly weapon the offender might be convicted of an assault and battery and when indicted for an assault with a deadly weapon, he could not plead conviction for the assault and battery in bar of the indictment, because the same act contained both offenses. In *Skidmore vs. Bricker* (77 III, 164) it was held that the prosecution and finding of a part of the persons indicted for an assault and battery is no bar to a prosecution for riot growing out of the same transaction. In *Wragg vs. Penn Township* (94 111., 12) this court held that the legislature had power to give two actions for the same act in obstructing a public road—one for a penalty to the township, to be expended on the roads, and the other by indictment—that the act was thus made two offenses, one against the township (municipality) and the other against the people and that both could recover by different proceedings."

See also *McPherson vs. Village of Chebanse* (114 111., 46).

(9) *State of Indiana*.—In the State of Indiana we find a number of decisions sustaining the doctrine that "a city may be authorized to provide by ordinance for the punishment of an act already punishable by the criminal law of the State." *Ambrose vs. State* (6 Ind., 351); *Madison vs. Hatcher* (8th Blackford, Ind., 341); *Indianapolis vs. Blythe* (2 Ind., 75); *Waldo vs. Wallace* (12 Ind., 569) ; *State vs. Kirk* (44 Ind., 401); *Williams vs. Warsaw* (60 Ind., 457).

In the case of *Ambrose vs. State* (supra) it appears that Ambrose was indicted for selling liquor without a license in violation of a State law. Upon trial it appeared that he had been licensed by the city of Madison to sell liquor under a city ordinance. He was found guilty and punished for a violation of a State law, notwithstanding the fact that he had a license to sell liquor under a license granted by the city. Mr. Justice Stuart, speaking for the court and in answer to objections urged, said:

"It is urged that it would be subjecting a party to be punished twice for the same offense. But that is not warranted. It is not pretended that the party can be twice punished under the same jurisdiction, but that the same act may be an offense against two different jurisdictions is no longer an open question;" citing in support of his conclusions the cases of *Fox vs. State of Ohio* (5 How., U. S., 410) and *Moore vs. People of Illinois* (14 How., U. S., 13).

In the case of *Waldo vs. Wallace* (12 Ind., 569) Mr. Justice Perkins, speaking for the court, said, in a case where the mayor of a city exercised dual judicial functions, in one capacity being authorized to act as a judge in cases for a violation of a city ordinance and in the other capacity acting as a judicial officer of the State: "Thus, the same act may, on the same day, be punished by him once as mayor, acting for the city, and once as judge, for a violation of the laws of the State; and one of these prosecutions will be no bar to the other."

In the case of *Williams vs. Warsaw* (Q0 Ind., 457) Mr. Justice Perkins, again speaking for the court, said: "The city may be authorized by statute to provide by ordinance for the punishment of an act already punishable by the criminal law of this State."

(10) State of Iowa.—In the case of *Bloomfield vs. Trimble* (54 Iowa, 399; 37 Am. St. Rep., 212), the question was presented of the legality of a city ordinance to punish an act (of intoxication), which act was also punishable under the general laws of the State. Mr. Justice Rothrock, speaking for the court, said:

"The ordinance in question is in substance the same as section 1548 of the (penal) code, which provides for the punishment of persons found in a state of intoxication. Both the State law and the ordinance provide for the punishment of the same offense. That an ordinance of this character is not void, see *Cooley's Constitutional Limitations*, 198, where it is said; 'Indeed, the same act may constitute an offense against both the State and the municipal corporation and may be punished under both, without a violation of any constitutional principle.' "

Mr. Justice Rothrock also cites *Bishop's Criminal Law* in support of his conclusions.

(11) State of Kansas.—The question before us has come before the supreme court of the State of Kansas several times. In the case of *Kansas City vs. Grubel* (57 Kan., 436; 46 Pac, 714), the question was squarely presented to the court. Mr. Justice Martin, speaking for the court, said :

"It is no objection to the validity of a city ordinance that it prohibits acts or omissions made penal by the laws of the State, provided the legislature has expressly authorized such municipal legislation. This is too well settled in Kansas and elsewhere to require the citation of authorities."

In the case of *In re Jahn* (55 Kan., 694), Mr. Justice Martin said: "An ordinance of a city prohibiting the unlawful sale of intoxicating liquors, and the keeping of any place for carrying on the sales of the same is valid, notwithstanding the penal laws of the State cover the same subject."

In the case of *In re Thomas* (53 Kan., 659), Mr. Justice Johnson, speaking for the court, said: "The fact that the State by its legislature has made provisions prohibiting and restricting the liquor traffic does not prevent a municipality from enacting provisions for the control of the traffic within the limits of the same. (*Franklin vs. Westfall*, 27 Kansas, 614; *City of Topeka vs. Myers*, 34 Kansas, 500; *City of Topeka vs. Zufall*, 40 Kansas, 47; *Monroe vs. City of Lawrence*, 44 Kansas, 607.)"

(12) State of Kentucky.—In the State of Kentucky we find that there exists a constitutional provision recognizing the right of a municipality, by ordinance, to punish an offense which is also punishable under the State law. Said constitutional provision prohibits a city, however, from imposing a less penalty under a municipal ordinance than that provided for by the State law. Said constitutional provision also prohibits a second prosecution for the same offense; that is to say, a conviction or acquittal under either the ordinance or the State law shall be a bar to another prosecution for the same offense.

Section 168 of the constitution of Kentucky provides: "No municipal ordinance shall fix a penalty for a violation thereof at less than that imposed by statute for the same offense. A conviction or acquittal under either (ordinance or statute) shall constitute a bar to another prosecution for the same offense."

See *March vs. Commonwealth* (51 Ky., 25); *Taylor vs. Owensboro* (98 Ky., 271; 56 American State Reports, 361).

(13) State of Louisiana.—The right or power of municipal corporations to adopt and enforce ordinances of special local importance, even though a general statute of the State exists relating to the same subject, has come before the court of last resort in the State of Louisiana several times. In each case the right of the municipal corporation has been sustained. In the case of the City of Monroe vs. Hardy (46 La. An., 1232), Mr. Justice McEnery made the following statement of the case:

"The defendant was convicted for playing within the limits of the city of Monroe a gambling game called 'craps.' The State of Louisiana, by Act No. 7 of 1882, prohibits the playing of this game, and affixes a penalty for violating the same. The defendant, because of this State statute, contends that the recorder's court of said city, before which he was convicted, had no jurisdiction to try the case, and that the city ordinance prohibiting the playing of the game of craps is null and void, being in contravention of the constitution of the State. The legislature had delegated to the city of Monroe ample and complete power to regulate and preserve the good order and peace of the city. Gambling is denounced by the constitution as a vice, and its regulation and prohibition fall within the police powers of the city.

"In a certain class of offenses there may be concurrent powers in the State and the municipal authorities to prohibit them. The decisions on this point have been so numerous and uniform in upholding this doctrine that it has passed as an elementary principle into the text-books. (Cooley's Cons. Limitations, p. 242; Dillon on Municipal Corp., vol. 1, sec. 368.) The jurisprudence of this State is in accord with this doctrine. (State vs. Fourcade, 45 La. An., 717.)

"In 30 La. An., 454, it is said that fines may be imposed by municipal corporations for violations of their ordinances, and that the State may impose a fine for violations of the same Act is well established. There can therefore be no objection to the municipal corporation imposing a fine for an act punished by a State statute, when the offense is of that nature that is embraced within the power of the municipal government to preserve public order and the public peace. The experience of municipal corporations will teach them which acts are of that nature that are likely to promote public disturbance, and in the exercise of their judgment in this direction there must necessarily be left to them a latitude of discretion which will not be disturbed by the courts unless in plain violation of personal rights.

"In the instant case we do not see, nor is it contended, that any of the personal rights of the defendant have been violated. He has transgressed the State statute and is liable to punishment for so doing. He has violated a city ordinance enacted in the furtherance of the good order and peace of the municipal corporation. Here are two distinct offenses—one directed against the police power of the State and the other against the municipal government. These offenses, committed by one act, are of that nature that two prosecutions can be instituted, since the State has delegated the power to the mayor and city council of Monroe to pass all necessary ordinances to preserve the good order and peace of the city.

"It would serve no useful purpose to enumerate the offenses daily punished by both the State and municipal corporations. It is sufficient to say that where the act falls within the delegated police powers to the city, the prosecution for its commission may be instituted by both the city and the State—in the former case, when the penalty imposed by the city is within the limits of the penalty it is allowed to impose, and does not exceed the limit imposed by the State. On this point the authorities are practically unanimous."

See Board of Police vs. Giron (46 La. An., 1364); State vs. Fourcade (45 La. An., 717; 40 Am. St. Rep., 249); State vs. Clifford (45 La. An., 980); State vs. Chase (33 La. An., 287); New Orleans vs. Collins (52 La. An., 973); State vs. Labatut (39 La. An., 513).

(14) State of Massachusetts.—In the State of Massachusetts, we find in the case of the Commonwealth vs. Goodnow (117 Mass., 114), a case where the city of Boston undertook by ordinance to prohibit any person from constructing any window which projected into any street, under a penalty of not less than \$4 nor more than \$50, and a like penalty for every day such window so projected should be continued after notice. The general statute of

the State provided that windows might project beyond the line of a house 1 foot. The defendant was charged with a violation of said city ordinance; he was arrested and taken before the municipal court. His defense was that, inasmuch as the city ordinance covered a subject upon which there existed a general statute, the ordinance was null and void. In this case the ordinance prohibited the projection of a window into the street beyond the line of the house. The State law permitted a window to be projected one foot beyond the line of the house. Apparently the ordinance and the State law were in conflict. Mr. Justice Endicott, speaking for the court, said:

"If the city of Boston had passed no ordinance upon the subject, the State statute would be the only law in force; but having passed an ordinance, regulating and prohibiting all projections of this description, even when they extend less than 1 foot into the street, we are of the opinion that such ordinance is valid, and in no proper sense inconsistent with the general law of the State."

In the case of *Morey vs. Commonwealth* (108 Mass., 433) the supreme judicial court of Massachusetts, speaking through Mr. Justice Gray, who later became an associate justice of the Supreme Court of the United States, in discussing the question before us said: "A single act may be an offense against two statutes; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other."

The conclusion reached in the case of *Morey vs. Commonwealth* by the supreme court of the State of Massachusetts has been quoted and approved by the Supreme Court of the United States on several different occasions. (*Gavieres vs. United States*, 220 U. S., 338.)

(15) *State of Maryland*.—One of the best considered cases which we have found is that of *Rossberg vs. State* (111 Md., 394.) In that case *Rossberg* was prosecuted by the city of Baltimore for the violation of an ordinance known as the "cocaine ordinance," which prohibited the sale, furnishing, giving away, or having in possession cocaine and kindred substances, etc., and which provided certain penalties for its violation. At the time of the passage of said ordinance there was in force in the State of Maryland a general statute which forbade selling, furnishing or giving away of cocaine and of the same substances and compounds mentioned in said ordinance, and which general statute provided certain penalties for its violation. The penalty provided by said ordinance was a fine of not less than \$100 nor more than \$500, with imprisonment for not less than six nor more than twelve months. The penalty provided by the State law was a fine of from \$25 to \$50 for the first offense; \$50 to \$100 for the second offense, and \$100 to \$200, with imprisonment in jail for not more than six months, for the third and subsequent offenses.

The defendant, *Rossberg*, was convicted in the lower courts and the case finally reached the supreme court. Mr. Justice Pearce, speaking for the court, after an extended discussion of the powers of the city of Baltimore under its charter, said:

"But passing from this consideration the real and substantial contention of the appellant is twofold: First, that a penal ordinance punishing the same act as that punished by State law, is invalid and void; and, second, that even if this cannot be sustained as broadly stated, that such an ordinance is invalid where it is inconsistent with the laws of the State upon the same subject, and that in this case the ordinance in question is inconsistent with the State law punishing the same act punished by the ordinance.

"In *Cooley's Constitutional Limitations* (5th ed., p. 241) the author says: The State law and the by-law may both stand together if not inconsistent. Indeed, an act may be a penal offense under the laws of the State, and further, penalties, under proper legislative authority, be imposed for its, commission by municipal by-laws, and the enforcement of the one would not preclude the enforcement of the other. Such is the clear weight of authority, though the decisions are not uniform."

"In *McQuillin on Municipal Ordinances*, a recent elaborate textbook, it is said: 'It is entirely competent for the

Legislature to confer in express terms such powers as will enable the local corporation to declare by ordinance any given act an offense against its authority, notwithstanding such act has been made by statute a public offense and a crime against the State * * * and further penalties may be imposed for its commission or omission by municipal ordinance.'

"In 28 Cyc, 697, it is said: 'Unless it is prohibited by some express constitutional or statutory provision, by the great weight of authority, municipal corporations may, by ordinance, prohibit and punish acts which are also prohibited and punishable as misdemeanors under the general statutes of the State or which may involve a common law offense; * * * such ordinances after much strenuous contention are now generally recognized as valid

"This statement of the law is supported by an overwhelming array of decided cases, collected in the notes to the works above cited, many of which we have laboriously examined, but we do not deem it necessary to review them here. The view taken in these cases is tersely expressed in *Monroe vs. Hardy* (46 La. An., 1232), which was a prosecution by the mayor of a city for a fine imposed by ordinance upon crap shooting, which was prohibited also by the State law, and the court said: 'In certain classes of offenses there may be concurrent powers in the State and in municipal authorities to prohibit them. The decisions on this point have been so numerous and uniform in upholding this doctrine that it has passed into an elementary principle in the textbooks.'"

Mr. Justice Pearce continues:

"It follows from what we have thus far said that municipal authorities may be given concurrent power with the State to punish certain classes of offenses, and that which first obtains jurisdiction of the person of the accused may punish to the extent of its power; and further that the ordinance is not made invalid by the mere fact that the State law and the ordinance provide in terms for distinct prosecutions for the same act. * * *

"But the appellant further contends that this ordinance is invalid under the express terms of the legislative grant, because it is inconsistent with the law of the State, and this supposed inconsistency is found in the fact that the penalties prescribed in the State law are different from those of the ordinance, the latter being heavier, and not distinguishing, as the State law does, between first, second, and third offenses.

"But all the text writers already cited herein unite in declaring that further and additional penalties may be imposed by ordinance, without creating inconsistency. The true doctrine, in our opinion, is concisely stated in 28 Cyc, 701, as follows: 'Such ordinances must not directly or indirectly contravene the general law. Hence ordinances which assume directly or indirectly to permit acts or occupations which the State statutes prohibit, or to prohibit acts permitted by statute or constitution, are under the familiar rule for validity of ordinances uniformly declared to be null and void. Additional regulation by the ordinance does not render it void.' * * * *Wyse vs. Jersey City Police Commrs.* (68 N. J. L., 127)."

The reason for the foregoing rule is found to be well stated in the case of *Van Buren vs. Wells* (53 Ark., 368) :

"Municipal corporations are in some respects local governments established by law to assist in the civil government of the country. They are founded, in part, upon the idea that the needs of the localities for which they are organized, 'by reason of the density of population, or other circumstances, are more extensive and urgent than those of the general public in the same particulars. Many acts are often far more injurious, while the temptations to do them are much greater, in such localities than in the State generally. When done in such localities they are not only wrongs to the public at large, but are additional wrongs to the corporations. To suppress them when it can be done, and, when there is a failure to do so, to punish the guilty parties, in many cases form a part of the duties of such corporations. Many of them can and ought to be made penal by incorporated cities and towns, although already made so by the statute. It sometimes becomes necessary for them to do so in order to accomplish the objects of their organization."

This language is especially applicable to the nefarious sale, and having in possession for unrestricted sale, of cocaine and other deadly drugs, so largely used in this day as a substitute for ordinary stimulants or intoxicants, and a good example of the application of the principles above stated is found in the case of *Mon Luck vs. Sears* (32 L. R. A., 738).

(16) State of Michigan.—A very interesting and important case is found in the State of Michigan. In the case of *People vs. Hanrahan* (75 Mich., 611), the defendant was arrested and convicted by the municipal court of the city of Detroit, Michigan, of the violation of a city ordinance which prohibited the keeping of houses of ill fame, and was sentenced to pay a fine of \$500. Later he filed a petition for a writ of certiorari in the supreme court, asking that the sentence of the municipal court be declared null upon the ground that said court was without authority to impose said sentence under the ordinance.

In 1887 the legislature of the State of Michigan enacted a law which provided that: "Every person who shall keep a house of ill fame, resorted to for the purpose of prostitution or lewdness, and every person who shall solicit, or in any manner induce, a female to enter such house for the purpose of becoming a prostitute, or shall by force, fraud, deceit, or in any like manner procure a female to enter such house for the purpose of prostitution or of becoming a prostitute, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the State prison not more than five years, or in the county jail not more than one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment, in the discretion of the court."

In 1883 the legislature of the State of Michigan granted to the city of Detroit a charter, which, among other provisions, contained the following: "The common council may prohibit, prevent, and suppress the keeping and leasing of houses of ill fame or assignation or for the resort of common prostitutes, disorderly houses, and disorderly groceries. It may restrain, suppress, and punish the keepers thereof, and the owners and lessors of such premises."

Section 54 of said charter provided that: "The common council shall have power to provide for the imprisonment and confinement in houses of correction, at hard labor or otherwise, of all persons liable to be imprisoned or confined under this act or any act relating to said city, or any ordinance of the common council."

Under the authority granted in said charter the common council of the city of Detroit passed an ordinance entitled "Disorderly houses," section 1 of which provided that: "No person shall keep within the limits of the city of Detroit any house of ill fame, house of assignation, or house for the resort of common prostitutes, * * * or shall in any manner contribute to the support, carrying on, or keeping of any such house or place."

Section 4 of said ordinance provided that: "Any person who shall violate any of the provisions of this ordinance shall be punished by a fine not to exceed \$500, and costs of prosecution; and the offender may be sentenced to be imprisoned in the house of correction until the payment thereof: Provided, however, That the term of such imprisonment shall not exceed six months."

It will be noted in reading the quotations from said law and the ordinances adopted under the charter of the city of Detroit that they both cover the same subject and that the punishment provided for by said law was different from the punishment provided for by the ordinance. Mr. Justice Champlin, speaking for the court in a very interesting opinion, said:

"Under our constitution the power to enact laws is vested in the legislature. But the legislature is authorized to confer upon organized townships, incorporated cities and villages, and upon the board of supervisors of the several counties, such powers of a local, legislative, and administrative character as they may deem proper. The object was to secure to local municipalities the power of self-government in matters of purely local concern.

"The nature and extent to which the legislature may confer this legislative power upon municipalities within their territorial limits is entirely within the discretion of the legislature. In exercising the power conferred of passing such laws of a local character as the wants of a particular community call for, it must happen that very many of the lesser crimes and misdemeanors which are punished under general laws must come under the police regulations of such municipalities, because they are more liable to be perpetrated by the vicious class who congregate in cities than elsewhere; and the peace and good order of the municipality require that they should be more promptly and summarily dealt with than they could be under the State law.

"I have no doubt that it was competent under the constitution for the legislature to confer upon the common council of the city of Detroit the authority contained in the sections of the charter above quoted. The ordinance appears to have been authorized by the charter.

"That the suppression of houses of ill fame in a city is a matter of great local concern there can be no question. That it can be dealt with more effectively by the city authorities than by the State, I think is plain. It would be contrary to the facts to assert that houses of ill fame in the midst of a city are not dangerous and revolting nuisances. They contaminate the morals of society, and render respectable neighborhoods obnoxious to decent people by their presence. Their suppression demands the closest attention of the guardians of the peace, and the most stringent police regulations to accomplish the object.

"These considerations, and others that might be suggested, show that the power conferred upon the common council was wise, and should be sustained if there be no constitutional objection."

Mr. Justice Champlin closes his opinion by saying: "I think the ordinance in question is valid, and that the charter provisions authorizing its enactment were not repealed by implication, but are in force, and valid. It follows that the conviction must be affirmed."

Other cases in the State of Michigan supporting the same doctrine are: *Wayne County vs. Detroit* (17 Mich., 390); *Fennell vs. Bay City* (36 Mich., 186); *People vs. Detroit White Lead Works* (82 Mich., 471).

(17) *State of Minnesota*.—The question which we are discussing has come before the supreme court of Minnesota many times. In the case of the *State vs. Lee* (29 Minn., 445), the defendant was indicted and tried in the district court for the offense of keeping a house of ill fame. Upon the trial in the district court the defendant offered to prove, under a plea of former conviction, that she had been duly convicted of the same offense under an ordinance of the city of St. Paul. The court refused to admit the evidence upon the ground that such former conviction was no bar to a subsequent prosecution by the State. The case finally reached the supreme court where it was held that prosecution and conviction, under an ordinance of the city of St. Paul, for keeping a house of ill fame in said city constitutes no bar to a prosecution for the same act under the general laws of the State. (*Mayor, etc., vs. Allaire*, 14 Ala., 400; *Wragg vs. Penn Township*, 94 111., 11; *Robbing vs. People*, 95 111., 175.) Mr. Justice Vanderburgh, who wrote the opinion for the court, in addition to announcing the foregoing doctrine, said:

"The text writers, Cooley, Dillon, and Bishop, concur in the same conclusion. We think the authorities on the subject altogether too respectable and weighty to be disregarded."

(18) *State of Mississippi*.—The following decisions by the supreme court of the State of Mississippi may be read for a further discussion of the right of the State and the municipality, under proper charter authority, to legislate upon the same subject: *Johnson vs. State* (59 Miss., 543); *Ex parte Bourgeois* (60 Miss., 663; 45 Am. Rep., 420).

(19) *State of Missouri*.—From an examination of the jurisprudence relating to the question which we are discussing, there appears to have been more cases decided by the appellate courts in the State of Missouri than in any other one State. The question was presented to the supreme court of the State of Missouri at a very early date in its history.

In the case of *Ex parte Hollwedell* (74 Mo., 395) the supreme court of the State of Missouri, speaking through Mr. Justice Norton, said:

"The right of a municipal corporation in this State to maintain in its own name a proceeding to recover a fine for nonobservance of an ordinance, has never been questioned, even though there be a general law of the State also imposing a fine for a like offense. (*St. Louis vs. Bentz*, 11 Mo., 61; *St. Louis vs. Cafferatta*, 24 Mo., 94; *Independence vs. Moore*, 32 Mo., 392; *State vs. Harper*, 58 Mo., 530; *State vs. Wister*, 62 Mo., 592.)"

In the case of *Ex parte Galdwell* (138 Mo., 233), the defendant was arrested and convicted in the municipal court for the violation of an ordinance prohibiting the carrying of concealed weapons; he was found guilty and sentenced to pay a fine of \$15. He refused to pay the fine imposed and was, therefore, imprisoned. He presented a petition for a writ of habeas corpus, upon the grounds that the city ordinance was in conflict with a law of the State and was, therefore, invalid. The supreme court in deciding the case said:

"A city ordinance that imposes a 'fine of not less than \$10 nor more than \$100' as a punishment for carrying concealed weapons is not unconstitutional and void because the statute of the State fixes a fine of 'not less than \$50 nor more than \$200 even though another statute says a city by ordinance shall have power to fix 'the same penalty and no other' for the same kind of offense. Had the city fixed a greater punishment, the ordinance would be void; but the words, 'the same penalty and no other,' evidently mean the same kind of punishment; that is, when the punishment is fixed by the statute by fine only, the offender cannot by the city be punished by imprisonment, nor vice versa."

The supreme court held that the ordinance in question was valid and that the judgment of the municipal court should be sustained. The petition for writ of habeas corpus was denied.

In the case of the *City of St. Louis vs. Ameln* the defendant was accused of selling or of having in his possession for sale adulterated milk, in violation of the ordinance of the city of St. Louis. He was convicted and he appealed. His case finally reached the supreme court. His contention was that the ordinance was illegal inasmuch as it was in conflict with the State law. The supreme court held that there was no conflict between the ordinance and the statute and that they are neither inconsistent nor irreconcilable with each other, and affirmed the judgment of the municipal court.

(20) *State of Nebraska*.—The question before us was brought before the supreme court of the State of Nebraska in the case of the *City of Brownville vs. Cook* (4 Neb., 101). In that case a complaint was filed against the defendant in the municipal court of the city of Brownville, charging her under the ordinance with the offense of maliciously breaking, with a cudgel, five beer glasses of one John Wagner in his place of business in said city. The defendant plead guilty and was fined \$3 and costs. Later the defendant filed a petition in error in the district court where, after hearing, the judgment of the municipal court was reversed. The city then appealed to the supreme court. In the supreme court various defenses were made. Among others, it was alleged by the defendant that, inasmuch as the State law punished the malicious destruction of property and so forth, the ordinance of the city of Brownville was null and void. Upon that question Mr. Chief Justice Lake, speaking for the court, said:

"It was urged upon our attention, with considerable earnestness, that, inasmuch as at the time this offense was committed, there was a general statute in force on the subject of malicious mischief, this should be taken as embodying the entire legislative will on this subject, and therefore that it would be reasonable to presume, not only that no further regulation was contemplated, but that it would be altogether unnecessary and unreasonable. But I think no such presumption exists. Surely, if the general police laws of the State were considered ample by the legislature, for the good and efficient government of the people in every portion of the State, it would hardly have been worth while to establish any local municipal governments whatever. I think the reasonable presumption is rather the reverse of this, and that the people of cities and villages, for various reasons at once apparent to anyone, require much more stringent regulations for their government, than do

those of the more sparsely settled districts of the State. In a city, property of every description is much more liable to the depredations, and individuals are far more frequently subjected to petty annoyances, at the hands of the evil disposed, than in the country, and it is the business of these local governments to provide all reasonable protection against them.

* * * * *

"But, even as to property falling within the purview both of the statute and the ordinance, the former does not supersede the latter, for it is a principle of very general application, that the same act may constitute an offense both against the State and the municipal government, and that both may punish it without infringing any constitutional right,

"For these reasons, I conclude that this is a valid ordinance, for the violation of which the defendant was liable to the punishment which it imposes."

While said case was disposed of upon another issue, the above quotation clearly indicated the views of the supreme court of the State of Nebraska.

(21) State of New Jersey.—A very interesting decision is announced by the supreme court of the State of New Jersey, speaking through its chief justice, Mr. Hornblower. The case is that of State vs. Plunkett (18 N. J. L., 5) The case involved the question whether a city ordinance making it an indictable offense for selling liquor in the city of Newark was valid in view of the fact that there existed a State law upon the same question. In the course of the decision Mr. Chief Justice Hornblower said:

"The doctrine contended for by the counsel for the defendant would sweep from the jurisdiction of the State courts, a very large portion of offenses against the laws of the State. Selling ardent spirits without license, keeping disorderly houses, gambling, riots, nuisances; larcenies committed at fires; selling unwholesome meats in markets, and a variety of other crimes, if committed within the city of Newark, and some other incorporated towns in this State, would cease to be indictable and punishable in our State courts. Such a result must not be reached by any doubtful construction. It involves a question of too serious import to the sovereignty of the State, and the peace and well-being of the community at large, to be settled upon technical principles, or to be deduced by mere implication of law, * * * The two statutes may well stand together, and it is sufficient in this case to say, that if the defendant had taken out a license under the common council, to sell ardent spirits by the small measure, he could not have been indicted; but if 'without license for that purpose first had and obtained from some authority legally competent to grant such license, he did sell ardent spirits by the small measure, then he violated the State law and was liable to be indicted. * * * The opinion of this Court therefore is, and they so advise the lower court, that the defendant is liable to indictment and conviction for the offense charged against him; and that they ought, upon his plea of guilty, to proceed to judgment according to law."

In the case of Howe vs. Plainfield (37 N. J. L., 145), the supreme court of New Jersey said that certain acts which were indictable as offenses against the State might also be by the legislature constituted offenses against the police regulations of municipalities, so as to subject the offender to the mode of trial incident to the proceeding for the violation of ordinances. (State vs. City of Gloucester, 50 N. J. L., 585; State vs. Trenton, 51 N. J. L., 498, 5 L. R. A., 352.)

(22) State of New York.—A case came before the supreme court of the State of New York at a very early date in its history. The case was that of Rogers vs. Jones (1 Wend., N. Y., 238), In this case a very extended discussion of all of the questions involved is found. Among other things Mr. Justice Woodworth, speaking for the court, said:

"But it is said that the by-law of a town or a corporation is void, if the legislature has regulated the subject by law. If the legislature has passed a law, regulating as to certain things in a city, I apprehend the corporation is not thereby restricted from making further regulations. Cases of this kind have occurred and never been

questioned on that ground; it is only to notice a case or two out of many. The legislature has imposed a penalty of \$1 for servile labor on Sunday; the corporation of the city of New York has passed a by-law imposing a penalty of \$5 for the same offense. As to storing gunpowder in the city of New York, the legislature and corporation have each imposed the same penalty. Suits to recover the penalties have been sustained under the corporation law. It is believed that the ground has never been taken that there was a conflict with the State law."

In the case of the State of New York vs. Marco (109 N. Y. Sup., 58) the defendant was charged with a violation of an ordinance of the city of New York. It was alleged that the ordinance was invalid for the reason that there existed a State law upon the same question. The supreme court, speaking through Mr. Justice MacLean, said:

"The purpose of the ordinance is the protection of the public by seeing that the measure in weight and bulk by which sales and purchases are made corresponds with the standard (People vs. City of Rochester, 45 Hun, N. Y., 102, 104, 105)—herein the true weight; and this ordinance, passed pursuant to the authority of the legislature, has the force of law, and is obligatory as if enacted by the legislature. (City of Buffalo vs. Railway Company, 152 N. Y., 276, 280.) That the ordinance in question superadded a penalty for acts penal by statute does not render the ordinance invalid, as the municipal government may be authorized to pass ordinances imposing new and superadded penalties for acts already penal by the laws of the state. (City of Brooklyn vs. Toynbee, 31 Barb., N. Y., 282, 284; Rogers vs. Jones, 1 Wend., 237, 261, 19 Am. Dec, 493; Abbott vs. State, 75 N. Y., 602.)"

In examining the doctrine in the State of New York, we have not overlooked the decisions in the cases of People vs. Jaehne (103 N. Y., 182) and People vs. O'Neil (109 N. Y., 251). While in the last two cases the supreme court of the State of New York held that the State law superseded a municipal ordinance, Mr. Justice Andrews, speaking for a majority of the court, said:

"The crime of bribery is not local, affecting only a particular locality. No matter in what place the crime is committed, or whether by a town, city, county, or State officer, it is an offense in the punishment of which the whole public are interested. It is peculiarly a crime against society at large. It impairs public confidence in the integrity of official administration, a confidence most necessary to be maintained. It is impossible to suppose that the legislature, when it enacted the Penal Code, intended to exempt officials in the city of New York from the operation of the bribery sections." (103 N. Y., 195.)

(23) State of Ohio.—There are few decisions in the State of Ohio upon the question which we are discussing. However, in each case where the question has arisen, right of the municipality to control by ordinance the offenses already punished under the State law is clearly recognized. In each of the cases which have come under observation, the particular ordinance was pronounced invalid for the reason, not that it was in conflict with the State law, but because the party had not been given a jury trial, under said ordinance, guaranteed under the constitution of the State. (Wightman vs. State, 10 Ohio, 452; Markle vs. Town Council of Akron, 14 Ohio, 587; Thomas vs. Village of Ashland, 12 Ohio St., 124; State vs. Ulm, 7 Ohio, N. P., 659; Inwood vs. State, 42 Ohio St., 186.)

(24) State of Oregon.—In the case of Wong vs. City of Astoria (13 Ore., 538), the defendant, a Chinawoman, was arrested upon a complaint accusing her of keeping, setting up, and assisting to keep, willfully and unlawfully, a bawdyhouse, in violation of an ordinance of said city. Her attorney filed a demurrer to the complaint, upon the ground that it did not constitute facts sufficient to constitute a crime against the city of Astoria; that the police court had no jurisdiction of the crime charged, or of the person of the defendant; that the ordinance was unconstitutional and void and was in conflict with the general laws of Oregon. The demurrer was overruled; the defendant was placed on trial, convicted and sentenced to pay a fine of \$50 and costs. Later the case came before the supreme court, and the question of the legality of the statute was discussed at length by the court. Mr. Justice

Thayer, speaking for the court, among other interesting things said:

"The legislative assembly of the State is especially authorized to create by special law corporations for municipal purposes. And the only limitation upon its authority in that respect is, that the acts incorporating towns and cities shall restrict their power of taxation. The grant of police powers to a city is an absolute necessity. The maintenance of sanitary regulations and good order are the main inducements to incorporate and if the power conferred for such purposes were a 'barren scepter,' the objects of the corporation would wholly fail. The incorporation of a city clothes the municipality with all the necessary means of self-government concerning local affairs. And a reasonable exercise of the power conferred is not only essential to its maintenance, but is a duty imposed upon the incorporators. The power to suppress and prohibit practices that are demoralizing and pernicious would be of little avail if it could not be vindicated. The offense directly affects the welfare of the city, and how could the latter suppress and prohibit it unless it had the right to adopt a by-law against it, and affix a penalty for its violation. The notion that a municipal corporation has no right to prescribe a penalty for the doing an act that is criminal in its nature, or which is a crime under the general laws of the State, cannot be upheld by authority or principle."

See *State vs. Sly*, 4 Ore., 277; *State vs. Bergman*, 6 Ore., 341.

(25) *State of South Carolina*.—The question before us has arisen several times in the State of South Carolina; A very interesting opinion, written by Mr. Chief Justice McIver, is found in the case of the *City of Greenville vs. Kemmis* (58 S. C, 427; 50 L. R. A., 725). It appears from the facts that the defendant was tried and convicted in the municipal court of the city of Greenville for a violation of a city ordinance relating to gambling, was found guilty, and sentenced to pay a fine of \$50 or be imprisoned for a term of thirty days. The case finally reached the supreme court of the State. The contention of appellant was that the ordinance was in conflict with the State law, and was therefore null and void. Mr. Chief Justice McIver, in answering the contention of the appellant, said:

"The State legislation upon the subject, even if construed as contended for by the appellant, and the municipal legislation here in question, can both stand together, and there is no conflict whatever. * * * Indeed, it is well settled in this State, at least, that the same act may be made an offense both against the State and the municipal law. As that great jurist, Judge Cooley, expresses it in his work on *Constitutional Limitations*: 'Indeed, the same act may constitute an offense both against the State and the municipal corporation, and both may punish it without violation of any constitutional principle.' And in a note he says, 'Such is the clear weight of authority, though decisions are not uniform,' and proceeds to cite the cases. In one of the cases which he cites (*Rogers vs. Jones*, 1 Wend., 261), we find the following language, which is so appropriate to the case in hand that we quote it: 'If the legislature have passed a law regulating as to certain things in a city, I apprehend the corporation are not thereby restricted from making further regulations.' (*Cross vs. North Carolina*, 132 U. S., 132; *State vs. Williams*, 11 S. C, 288; *Anderson vs. O'Donnell*, 29 S. C, 368, 369, 1 L. R. A., 636, 637, 13 Am. St. Rep., 728.)

"If this be so, then it is clear that even though the legislature may have passed a statute in reference to the offense against the State of gaming, the municipal corporation of Greenville is not thereby restricted from making further regulations upon the same subject, which, of course, have no operation except within the corporate limits of Greenville."

See *Summerville vs. Pressley*, 33 S. C, 56; 8 L. R. A., 854; *Dillon on Municipal Corporations*; *Harrison vs. Baltimore*, 1 Gill, Md., 264.

(26) *State of North Carolina*.—The question before us has been discussed many times in the State of North Carolina. (*Town of Washington vs. Hammond*, 76 N. C, 33; *State vs. Langston*, 88 N. C, 692; *State vs. Brittain*, 89 N. C, 574; *State vs. Keith*, 94 N. C, 933.)

In these cases by obiter it appears than an ordinance upon a question upon which there exists a State law is void,

but an examination of said cases shows that they were decided upon the ground that the grant of the charter in each case was not sufficient to justify the particular ordinance. It would seem, from what was said in some of these cases, that if the charter had been sufficient to authorize the particular ordinance, that the same would have been pronounced valid. In the case of *State vs. Brittain* (supra) Mr. Justice Merrimon, in delivering the opinion of the court, said: "It may be that the legislature has power to authorize a town to make an offense against the State a separate offense against the city, but this could be done only by an express grant of authority."

(27) *State of South Dakota*.—We have found a very interesting case in the State of South Dakota, where the question of the effect of a conflict between a city ordinance and a State law was discussed, in the case of the *City of Yankton vs. Douglass* (8. S. D., 440). In that case Mr. Justice Corson, speaking for the court, said:

"An act may constitute a penal offense under the laws of the State, and further penalties, under proper legislative authority, may be imposed for its commission by municipal laws; and the enforcement of the one would not preclude the enforcement of the other."

Justice Corson cites in support of his conclusions, the following authorities: *Cooley's Constitutional Limitations; Mayor etc., vs. Allaire* (14 Ala., 400); *Rogers vs. Jones* (1 Wend., N. Y., 261); *People vs. Hanrahan* (75 Mich., 611). See also *Elk Point vs. Vaughn* (1 Dakota, 108; 46 N. W., 577).

Mr. Justice Corson quoted approvingly from the very interesting case of *Mayor etc., vs. Allaire* (14 Ala., 400) as follows: "The object of the power conferred by the charter, and the purpose of the ordinance itself, was not to punish for an offense against the criminal justice of the country, but to provide a mere police regulation for the enforcement of good order and quiet within the limits of the corporation. So far as an offense has been committed against the public peace and morals, the corporate authorities have no power to inflict punishment, and we are not informed that they have attempted to arrogate it. It is altogether immaterial whether the State tribunal has interfered and exercised its powers in bringing the defendant before it to answer for the assault and battery, for whether he has there been punished or acquitted is alike unimportant. The offenses against the corporation and the State, we have seen, are distinguishable, and wholly disconnected, and the prosecution at the suit of each proceeds upon a different hypothesis. The one contemplates the observance of the peace and good order of the city; the other has a more enlarged object in view—the maintenance of the peace and dignity of the State."

(28) *State of Tennessee*.—In the case of *Greenwood vs. State* (6 Baxter, Tenn., 567; 32 Am. Rep., 539), the question presented to the supreme court of the State of Tennessee was whether, where a party has been convicted and punished for keeping a gaming house by the municipal authorities of a town or city, it is a bar to prosecution for the same offense by the State, In answering that question, the supreme court held that a conviction and punishment under a city ordinance for keeping a gaming house is no bar to a prosecution for the same offense by the State. Mr. Justice Freeman, speaking for the court, said:

"Mr. Cooley, in his work on *Constitutional Limitations*, citing a number of cases, lays down the principle, 'that the same act may constitute an offense both against the State and the municipal corporation, and both may punish it without violation of any constitutional principle.' In the case of the *Mayor of Mobile vs. Allaire* (14 Ala., 400), we think a correct view of the question is stated: 'The object of the power conferred by the charter, and the purposes of the ordinance itself, was not to punish for an offense against the criminal justice of the country, but to provide a mere police regulation for the enforcement of good order and quiet within the limits of the town. So far as an offense has been committed against the public peace and morals, the corporate authorities have no power to punish. It is immaterial whether the State has punished the party or not, the prosecution at the suit of each proceeds upon a different hypothesis; the one contemplates the observance of the peace and good order of the city; the other has a more enlarged object in view—the maintenance of the peace and dignity of the State.'"

* * * * *

"We need not refer to the authorities presented by counsel on this question. Suffice it to say, that in some of them a different conclusion has been reached from what we have arrived at, but we think the large preponderance is in favor of the rule we have laid down in this case, though not for precisely the same reasons herein given."

In the case of the State vs. Taxing District of Shelby County, Mr. Justice Cooper, speaking for the court, said: "Proceedings instituted by the proper officers of the municipality to recover fines and penalties for a violation of ordinances are not State prosecutions, nor is a judgment therein a bar to a prosecution for an offense against the laws of the State committed by the same act. (State vs. Mason, 3 Lea, Tenn., 649; Greenwood vs. State, 6 Baxt., Tenn., 567.)"

(29) State of Utah.—In the case of Salt Lake City vs. Howe (37 Utah, 170; 106 Pac, 705), a complaint was filed against the defendant charging him that he had brought milk into the city and there had it in his possession and offered it for sale and sold it, without obtaining a permit from the food and dairy commissioner of the city, contrary to a provision of the ordinance of said city. The defendant was duly arrested, convicted, and sentenced in the municipal court. He appealed to the circuit court (court of first instance) where he was again found guilty and sentenced to pay a fine of \$50. From the latter sentence he appealed to the supreme court. In the supreme court the defendant alleged that the ordinance was invalid, for the reason that there was a general statute of the State relating to the same subject. The supreme court, speaking through its chief justice, Mr. Straup, held that the legislature can confer police powers upon a city over subjects included within existing statutes, and authorize it to prohibit and punish by ordinance acts which are also, prohibited and punished by the statute. (Ex parte Douglas, 1 Utah, 108.)

(30) State of Washington.—In the case of the City of Seattle vs. Chin Let (19 Wash., 38; 52 Pac, 324), the supreme court of the State of Washington decided that: "A municipality authorized by its charter to provide by ordinance for the punishment of all practices dangerous to public safety or health and for the preservation of public morality, should not be restricted, in drafting ordinances defining the offenses committed within its limits, to particular offenses created by the general laws, nor to the particular terms used by the legislature in defining such offenses."

In the Washington case it appears that the ordinance in question was in fact broader in its scope and application than the State law touching the same subject.

(31) State of Wisconsin.—In the case of the City of Milwaukee vs. Newman (96 Wis., 258; 71 N. W., 438), we have a case where the city of Milwaukee attempted to regulate the question of gambling and gambling houses and so forth. In that State there existed a State law upon the same question. The defendant contended that the city ordinance was invalid because of the existence of the State law upon the same subject. In deciding that question, the supreme court of the State of Wisconsin, through Mr. Justice Pinney, said:

"It seems to be the clear weight of authority that an act may be a penal offense under the laws of the State, and that further penalties, under proper legislative authority, may be imposed for its commission by municipal by-laws or ordinances, and the enforcement of the one would not preclude the enforcement of the other. (Cooley, Const. Lim., 239, and cases cited.) In Mayor vs. Allaire (14 Ala., 400), where a city ordinance imposed a fine for assault and battery committed within the city limits, and its validity was questioned, the court said: 'The object of the power conferred by the charter, and the purpose of the ordinance itself, was not to punish for an offense against the criminal justice of the country, but to provide a mere police regulation for the enforcement of good order and quiet within the limits of the corporation. So far as an offense has been committed against the public peace and morals, the corporate authorities have no power to inflict punishment.

* * * The offense against the corporation and against the State are distinguishable and wholly disconnected,

and the prosecution, at the suit of each, proceeds upon a different hypothesis. The one contemplates the observance of the peace and good order of the city. The other has a more enlarged object in view—the maintenance of the peace and dignity of the State.' The great weight of authority is clearly in support of this view (1 Beach, Pub. Corp., sec. 510, and cases cited); * * * The ordinance in question is a police regulation for the city, passed under competent legislative authority, the better to subserve good morals and civil order in a large city, where the necessity of stringent police regulations is greater than in rural or less densely settled communities."

See *Platteville vs. McKernan*, 54 Wis., 487.

(32) *United States*.—The question of double punishment for the same act, resulting from a violation of a State and a Federal law, has come before the Supreme Court of the United States in numerous cases, and the right of the State to punish for an act in violation of a State law and the right of the Federal Government to punish the same act as being in violation of a Federal law has been universally sustained. (*Fox vs. State of Ohio*, 46 U. S., 5 How., 410; *U. S. vs. Marigold*, 50 U. S., 9 How., 560; *Moore vs. State of 111.*, 55 U. S., 14 How., 13; *Ex parte Siebold*, 100 U. S., 371; *Cross vs. State of North Carolina*, 132 U. S., 131; *Carter vs. McClaughry*, 183 U. S., 365, 395; *U. S. vs. Flemister*, 5 Phil. Rep., 650, 207 U. S., 372; *U. S. vs. Gavieres*, 10 Phil. Rep., 694, 220 U. S., 338.)

One of the first cases which came before the Supreme Court of the United States in which a State, by statute, attempted to punish an offense similar to an offense already punished under a statute of the United States, was that of *Fox vs. State of Ohio* (46 U. S., 410). In that case the statute of the United States provided for the punishment of counterfeiting the securities and current coin of the United States. In the State of Ohio there was a statute punishing the offense of circulating counterfeit coin of the United States. Fox was indicted, tried, and sentenced under the State law. He appealed to the Supreme Court of the United States upon the ground that the State statute was void and that the State court was without jurisdiction to punish him under the same, for the reason that there existed a similar statute of the Federal Government. Mr. Justice Daniel, speaking for the court, said:

"It has been objected on behalf of the plaintiff in error, that if the States could inflict penalties for the offense of passing base coin, and the Federal Government should denounce a penalty against the same act, an individual under these separate jurisdictions might be liable to be twice punished for one and the same crime, and that this would be in violation of the fifth article of the amendments to the Constitution, declaring that no person shall be subject for the same offense to be twice put in jeopardy of life or limb. Conceding for the present that Congress should undertake, and could rightfully undertake, to punish a cheat perpetrated between citizens of a State because an instrument in effecting that cheat was a counterfeited coin of the United States, the force of the objection sought to be deduced from the position assumed is not perceived; for the position is itself without real foundation. The prohibition alluded to, as contained in the amendments to the Constitution, as well as others with which it is associated in those articles, were not designed as limits upon the State governments, in reference to their own citizens. They are exclusively restrictions upon federal power, intended to prevent interference with the rights of the States, and of their citizens."

In this case (*Fox vs. State of Ohio*) the court arrived at the conclusion that the State punished one offense and the United States another, and therefore there was no conflict of authority.

In a very extensive footnote in the case of *Fox vs. State of Ohio* (46 U. S., 410), we find the following statement, supported by the following authorities:

"The law also is well settled that the municipality may punish for the same act that is an offense both against a State law and a town or city ordinance. The proceeding under the ordinance is regarded as a civil suit to enforce a penalty, although the judgment rendered is enforced by imprisonment. When the town or city prosecutes the offender, it is for an offense against the town or city only, and not against the State. (*Rogers vs. Jones*, 1 Wend., N. Y., 261; *Mayor vs. Allaire*, 14 Ala., 400; *Mayor vs. Rouse*, 8 Ala., 515; *Inhabitants etc., vs.*

Mullins, 13 Ala., 341; Mayor vs. Hyatt, 3 E. D. Smith, N. Y., 156; People vs. Stevens, 13 Wend., N. Y., 341; Blatchley vs. Moses, 15 Wend., N. Y., 215; Amboy vs. Sleeper, 31 111., 499; State vs. Crummey, 17 Minn., 50; State vs. Oleson, 26 Minn., 507; Levy vs. State, 6 Ind., 281; Brownville vs. Cook, 4 Neb., 101; Greenwood vs. State, 6 Baxt., Tenn., 567; s. c. 32 Am. Rep., 539; St. Louis vs. Bentz, 11 Mo., 61; State vs. Gordon, 60 Mo., 383; State vs. Ludwig, 21 Minn., 202; Shafer vs. Mumma, 17 Md., 331; Bloomneld vs. Trimble, 54 Iowa, 399; s. c. 37 Am. RepM 212; Fennell vs. Bay City, 36 Mich., 186; Chicago Packing Co. vs. Chicago, 88 111., 221; 30 Am. Rep., 545; McRea vs. Americus, 59 Ga., 168; Hamilton vs. State, 3 Tex. App., 643; Savannah vs. Hussey, 21 Ga., 80; see Mr. Thompson's Essay on Once in Jeopardy, 4 Crim. L. Mag., 487.)"

The doctrine as announced in the case of Fox vs. State of Ohio has been cited and followed in numerous decisions of the Supreme Court of the United States. In the case of Carter vs. McClaughry (183 U. S., 365), the Supreme Court of the United States, speaking through its late Chief Justice, Mr. Fuller, said:

"A conviction or acquittal upon one indictment is no bar to subsequent conviction and sentence upon another, unless the evidence required to support a conviction upon one of them would have been sufficient to warrant a conviction upon the other. The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. A single act may be an offense against two statutes; and if each statute requires proof of an additional fact, which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other."

This quotation was taken from an opinion of Mr. Justice Gray, found in the case of Morey vs. Commonwealth (108 Mass., 433). Mr. Justice Gray, at the time he wrote the same, was chief justice of the supreme court of Massachusetts. Later he was associate justice of the Supreme Court of the United States. This quotation has also been approved by the Supreme Court of the United States in affirming the decision of the Supreme Court of the Philippine Islands in the case of United States vs. Gavieres (220 U. S., 338; 10 Phil. Rep., 694).

This doctrine is further illustrated in the case of Cross vs. State of North Carolina (132 U. S., 181). In that case Cross had been arrested, tried, and convicted in the State court of the State of North Carolina. He appealed to the Supreme Court of the United States upon the ground that the sentence of the State court was based upon a statute repugnant to the laws of the United States. The late Mr. Justice Harlan, speaking for the court, said:

"The argument in behalf of the plaintiffs in error fails to give effect to the established doctrine that the same act or series of acts may constitute an offense equally against the United States and the State, subjecting the guilty party to punishment under the laws of each government. This doctrine is illustrated in the cases of Fox vs. State of Ohio (5 How., 410, 433); U. S. vs. Marigold (9 How., 560, 569); Moore vs. State of Ill. (14 How., 13, 19); Ex parte Siebold (100 U. S., 371, 390)."

In the foregoing quotations from the jurisprudence established by the different States, an effort has been made to show what in fact is the weight of authority upon the question of the right of a municipality, under proper charter grant of power, to adopt ordinances making acts offenses which are also offenses under the penal laws of the State. We believe that the result shows that Mr. Justice Cooley was right when he said:

"An act may be penal offense under the laws of the State and further penalties, under proper legislative authority, may be imposed for its commission by municipal by-laws, and the enforcement of the one cannot preclude the enforcement of the other. Such is the clear weight of authority, though the decisions are not uniform."

No cases have been found, and it is believed that there are none, where the right of a municipality, under proper charter grants, has been denied. In several States where the right has been denied, it has been found that there existed some statutory or constitutional inhibition against it.

It is not contended that a city may, by ordinance, punish all offenses usually punished under the penal laws of the

State. In the first place cities are limited by their charter powers, and in the second place, the charter powers usually limit the city ordinances to offenses which disturb the peace, morals, or good order within the limits of the municipality.

The cases which we have examined in which the ordinances have been sustained even though they related to offenses already punished under the general laws of the State, relate to the following classes of offenses: Bawdy-houses; houses of ill fame; lewd women on the streets; public drunkenness; liquor selling; selling liquor on Sunday; keeping open saloons on Sunday; gaming; gambling; keeping gambling houses; billiard tables; selling lottery tickets; nuisances; immoral pictures; disturbing the peace; assault; assault and battery; carrying concealed weapons; animals running at large; obstructing highways; regulating bay windows; fast and careless driving in the streets; regulating porters in and about railway stations; selling and keeping for sale impure or unwholesome foods, including milk, etc.; tippling houses; visiting houses for the purpose of smoking opium; visiting houses where opium is smoked, or used upon the human body; visiting houses of ill fame.

The question of the right of a municipality to adopt an ordinance making an act an offense which is already an offense under the general laws of the state has come before this court on several occasions. (U. S. vs. Chan-Cun-Chay, 5 Phil. Rep., 385; U. S. vs. Flemister, 5 Phil. Rep., 650; U. S. vs. Gavieres, 10 Phil. Rep., 694; U. S. vs. Vallejo, 11 Phil. Rep., 193; Miranda vs. Smith, R. G. No. 4987[1]; U. S. vs. Isidoro Espiritusanto, 23 Phil. Rep., 610; U. S. vs. Roque et al., R. G. No. 1022.)

In each of the cases of United States vs. Chan-Cun-Chay, United States vs. Flemister, United States vs. Gavieres, and United States vs. Vallejo (supra) the municipality had made a particular act an offense which act was also an offense under the general penal laws. Those cases differ, however, from the present one, in the fact that in each one of them the offense under the ordinance was different from the offense under the general penal laws. In each case, however, the act punishable was the same. In the present case the act is the same offense under both the ordinance and the general law. Under the ordinance and the general law, the offense was jueteng. The cases of United States vs. Flemister and United States vs. Gavieres were appealed to the Supreme Court of the United States, where the decision of the Supreme Court of the Philippine Islands was affirmed. (See U. S. vs. Flemister, 5 Phil. Rep., 650, 207 U. S., 372; U. S. vs. Gavieres, 10 Phil. Rep., 694, 220 U. S., 338.)

The question, however, which we are discussing was directly decided by this court in the case of U. S. vs. Espiritusanto (23 Phil. Rep., 610). In that case this court, speaking through Mr. Justice Torres, said:

"A municipal council acts within its powers, as conferred by organic law, in enacting an ordinance prohibiting the game called jueteng within the limits of the municipality. The Municipal Code (Act No. 82, sec. 39) authorizing municipalities to provide against the evils of gambling should be understood to include the power to prohibit games of chance and to make necessary regulations to exterminate the evils arising from the playing of prohibited games. A municipal ordinance prohibiting the game of jueteng is, furthermore, in conformity with the provisions of Act No. 1757, inasmuch as jueteng is included in the games of chance that are absolutely prohibited by the general law."

We might have based our whole conclusion in the present case upon the decision in the case of United States vs. Espiritusanto. We have, however, cited the jurisprudence of the different courts of last resort in the United States and the well-known authors who have written upon this subject simply as confirmatory of the soundness of the doctrine announced in that case.

There is another question involved in the present case which the attorney for the appellant has not suggested nor discussed. It is: In view of the fact that the offense under the ordinance is precisely the same offense under the general law, can the defendants be punished both by the municipal authorities and by the state authorities? This

question is suggested by reason of the provisions of the Philippine Bill, which provides that a party cannot be placed twice in jeopardy for the same offense. In view of the fact, however, that the question has not been discussed in the present case, neither by the attorney for the appellant nor by the attorney for the appellee, we defer the discussion of that question for consideration in the case of *United States vs. Jose et al.* (R. G. No. 7118), where the question has been directly raised by the parties.

The appellant contends that Act No. 1757, which attempted to prohibit the gambling game of *jueteng*, repealed the power granted to the municipality by the general charter (Act No. 82) to provide against the evils of gambling, etc. Act No. 1757 does not attempt to expressly repeal that power of the municipalities. If said act does not repeal the power granted under Act No. 82, it is done by implication. Implied repeals are not favored by the law. A statute does not, by implication, repeal a prior one, unless there is such positive repugnance between them that they cannot stand together. (*Arthur vs. Homer*, 96 U. S., 137; *Chew Heong vs. U. S.*, 112 U. S., 550; *Beals vs. Hale*, 4 How., U. S., 36; *Ex parte Yerger*, 8 Wallace, 85.) Implied repeals are seldom admitted, except on the grounds of repugnancy and never when the former act can stand together with the new act. (*U. S. vs. Langston*, 11 & U. S., 389; *Louisville Water Co. vs. Clark*, 143 U. S., 1; *Lau Ow Bew vs. U. S.*, 144 U. S., 47; *Lem Moon Sing vs. U. S.*, 158 U. S., 538; *Ward vs. Race Horse*, 163 U. S., 504; *U. S. vs. Mrs. Gue Lim*, 176 U. S., 459; *U. S. vs. Barnes*, 222 U. S., 513; *Mills vs. Russell*, 116 U. S., 13.)

It might also be stated as a legal proposition that a second law on the same subject does not, without a repealing clause or negating words, repeal a former one, unless its provisions are so clearly repugnant as to imply a negative (*Welch vs. Cook*, 97 U. S., 541), unless it clearly appears that the two laws cannot stand and be enforced together. The repugnancy between two statutes which would justify the courts in holding that one repeals the other should be very clear, especially when the latter law does not attempt, by express terms, either in the title or the body of the law, to repeal the former. Mr. Justice Cooley, in his work on *Constitutional Limitations* (6th ed., p. 182), says:

"This rule has peculiar application and force in the case of laws, of special and local application, which are never to be deemed repealed by general legislation, except upon the most unequivocal manifestation of intent to that effect (*Cass vs. Dillon*, 2 Ohio State, 607; *Fosdick vs. Perrysburg*, 14, Ohio State), 472; *McKenna vs. Edmundstone*, 91 N. Y., 231; *Clark vs. Davenport*, 14 Iowa, 494; *Covington vs. E. St. Louis*, 78 Ill, 548.)"

In the present case, Act No. 82, while in fact it was a general law providing for the organization of all of the municipalities of the Philippine Islands, except Manila and those situated in the non-Christian tribes, nevertheless it was a special law in the sense that it applied only to municipalities. It is not believed that the Legislature in adopting Act No. 1757 intended in the remotest way to repeal or modify any of the provisions of the general municipal code (Act No. 82). And, moreover, we believe that there exists positive proof in the subsequent Acts of the Legislature of that fact. Act No. 1757 was adopted on October 9, 1907. On the 3d of February, 1913, the Philippine Legislature, by Act No. 2212, amended Act No. 1757, providing that the court should order the confiscation of money, articles, instruments, appliances, and devices used in gambling, in case the defendants were found guilty. This same Act (No. 2212) contained the provision that said amendment should be applicable in cases of conviction of a violation of municipal ordinances prohibiting gambling. We have, therefore, an express recognition by the Legislature of the right of municipalities to prohibit gambling by municipal ordinance. We are clearly convinced that the Legislature did not, by Act No. 1757, repeal or modify in any way whatever the provisions of Act No. 82, relating to the power of municipalities to provide against the evils of gambling, etc.

In the absence of some inhibition, statutory or constitutional, against the legislative department, the courts have no right to dictate what laws shall be adopted by that department of the Government, and what laws shall not be adopted, so long as a well-defined public policy is not violated. This court, in discussing that question in the case

of *Case vs. Board of Health* (24 Phil. Rep., 250), said:

"If a municipal ordinance is adopted in conformity with the powers conferred upon the municipality, the court will not pronounce it unreasonable, illegal, and void, unless and until it is shown to have contravened or violated some fundamental law. The question of the validity of every statute is first determined by the legislative department of the Government and the courts will resolve every presumption in favor, of its validity. Courts are not justified in adjudging statutes invalid in the face of the conclusions of the Legislature, when the question of its validity is at all doubtful. The courts will assume that the validity of a statute was fully considered by the legislature when adopted. Courts will not presume a statute invalid unless it clearly appears that it falls within some of the inhibitions of the fundamental laws of the state. The wisdom or advisability of a particular statute is not a question for the courts to determine. If a particular statute is within the constitutional power of the Legislature to enact it should be sustained whether the courts agree or not in the wisdom of the enactment. If the statute covers subjects not authorized by the fundamental laws of the land, or by the constitution, then the courts are not only authorized but are justified in pronouncing the same illegal and void, no matter how wise or beneficent such legislation may seem to be. Courts are not justified in measuring their opinions with the opinion of the legislative department of the Government, as expressed in statutes, upon questions of the wisdom, justice and advisability of a particular law. In exercising the high authority conferred upon the courts to pronounce valid or invalid a particular statute, they are only the administrators of the public will, as expressed in the fundamental law of the land. If an Act of the Legislature is to be held illegal, it is not because the judges have any control over the legislative power, but because the Act is forbidden by the fundamental law of the land and because the will of the people, as declared in such fundamental law, is paramount and must be obeyed, even by the Legislature. In pronouncing a statute illegal, the courts are simply interpreting the meaning, force, and application of the fundamental law of the state."

It has been suggested that by the decision of the Supreme Court of the United States in the case of *United States vs. Grafton*, the doctrine announced in the cases of *United States vs. Chan-Cun-Chay*, *United States vs. Flemister*, *United States vs. Gavieres*, *United States vs. Vallejo*, and *Miranda vs. Smith*, has been overruled. There might be some weight in that suggestion if it were not for the fact that the Supreme Court of the United States affirmed the decision of this court in the cases of *United States vs. Flemister* and *United States vs. Gavieres*, after the decision in the *Grafton* case, thereby clearly indicating that there was no intention in the *Grafton* case to modify the doctrine relating to the power of municipalities as announced in the *Flemister* and *Gavieres* cases. And, moreover, in the case of *United States vs. Gavieres* (10 Phil. Rep., 694; 220 U. S., 338) the Supreme Court of the United States expressly mentions and discusses the *Grafton* case, which shows that there was no oversight of the jurisprudence involved in the different cases. The effect of the *Grafton* case was simply that a person, under the laws of the Philippine Islands, could not be punished twice for the same offense. It will be remembered that *Grafton* was acquitted by a court-martial of the crime of murder. He was again arrested and tried by the Court of First Instance for exactly the same offense.

From all of the foregoing, our conclusions are:

- That the charter (Act No. 82) of the municipality of Malabon fully authorized the adoption of the ordinance in question. (Ordinance No. 1, series of 1910.)
- That, inasmuch as the charter (Act No. 82) fully authorized the ordinance in question, the same was valid, even though the state (the central government) subsequently enacted a general law upon the same subject, making the same act an offense.
- That Act No. 1757 neither expressly nor by implication repealed the authority granted, in Act No. 82, to the municipality of Malabon, to adopt the ordinance in question.
- That there is no statutory or constitutional provision in force in the Philippine Islands, prohibiting the legislative

department of the Government from authorizing municipalities to adopt ordinances, within their charter grants, making certain acts offenses, which tend to disturb the peace and good order within their limits, and to corrupt the morals of their people, even though such acts are also made offenses by the general law.

For all of the foregoing reasons, it is hereby ordered that the appeal be dismissed and that the cause be returned to the court from whence it came for the execution of the sentence heretofore rendered by the lower court, with costs against the appellants.

Arellano, C. J., Torres and Mapa, JJ., concur.

CARSON, J., concurring:

I concur, reserving, with the consent of the court, the right to file a concurring opinion, if it appears to be necessary.

[1] Not reported.

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