

Case No. 5,028.

FRANCE V. WASHINGTON.

[5 Cranch, C. C. 667.]¹

Circuit Court, District of Columbia.

March Term, 1840.

MUNICIPAL CORPORATIONS—PROHIBITORY LICENSE TAX.

The corporation of Washington has power, under the charter of May 15, 1820, § 7 [3 Stat. 586], “to provide for licensing, taxing, and regulating” “venders of lottery tickets,” although the tax may be so high as to amount in effect to a prohibition; and to require the applicant for a license to deposit the license money in bank before the issuing of the license.

Appeal from the judgment of a justice of the peace [in the case of the corporation of Washington against Lewis H. France], for the penalty of twenty dollars, for exercising and dealing in the business and employment of a vender of lottery tickets, in the city of Washington, on the 25th of February, 1840, contrary to the by-law of the 25th of October, 1838.

The words of the charter upon this subject, are “That the corporation aforesaid shall have full power and authority” “to provide for licensing, taxing, and regulating,” “venders of lottery tickets;” and “to restrain or prohibit lotteries.” By the first section of the by-law of the 25th of October, 1838, it is enacted, “That it shall not be lawful for any person or persons within the limits of this corporation to exercise or deal in the business or employment of vender of lottery tickets without having first obtained a license for such purpose from the mayor.” “And that before the mayor shall grant such license there shall be paid into bank, according to the act of May the thirty-first, eighteen hundred and thirty-six, for the use of this corporation, by the person or persons applying for such license, the sum of three hundred dollars.” And by the second section, it is enacted, “That if any person, or persons, shall, from and after the passage of this act, exercise, or deal in the business or employment of vender of lottery tickets, within the limits of this corporation, without having first obtained a license for such purpose, as required by the first section of this act, he, she, or they shall forfeit and pay to this corporation, the sum of twenty dollars for each and every day, he, she, or they shall so offend, to be recovered and distributed as is by law provided for the recovery and distribution of fines.” By the first section of the by law of May 31, 1836, it is enacted, “That from and after the 30th day of June next, all money due, accruing, or receivable by the corporation, except the taxes upon real and personal property, and wharfages, shall be paid by the person making the same, directly into the bank in which the deposits of the corporation are or shall be made; which bank shall issue to the person a certificate therefor; and no license shall be issued or credit given, by any officer of the corporation, for a payment made, except upon a surrender of such certificate of deposit, as hereinbefore provided.”

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Brent & Brent, for appellant, contended that the charter gave the corporation power to license only, not to prohibit the exercise of the business of vender of lottery tickets. That the tax of three hundred dollars amounts to a prohibition, and exceeds the power given, and is, therefore, void. They contended, also, that the corporation had no authority to require the applicant for a license to pay the money into any bank as a condition of granting the license.

But THE COURT nem. con. overruled the objections, and affirmed the judgment, with, costs.

¹ [Reported by Hon. William Cranch, Chief Judge.]