55/8

MARCH 1847 #62

STATE OF MO
VS
JOHN CROWLEY
ST. LOUIS COUNTY

} Liquor Violation

Sold Liquor w/o a license

State of Missouri ss.

At a term of the Saint Louis Criminal Court begun and held at the City of Saint Louis within and for the County of Saint Louis on the first Monday of July, being the sixth day of said month in the year of our Lord one thousand eight hundred and forty six were present the Honorable Alonzo W. Manning Judge Nathaniel Holmes Esquire Circuit attorney William F. McKnight Esquire Marshal and Lewis F. Lacy Clerk. Wednesday 22nd July 1846.

Indictment The Grand Jurors return to the bar and deliver the following Indictment as a true Bill viz: State of Missouri County of St Louis ss. St Louis Criminal Court July Term 1846. The Grand Jurors for the State of Missouri for the body of the County of Saint Louis upon their oath present that John Crowley late of the County aforesaid Gentleman on the second day of June in the year of our Lord one thousand eight hundred and forty six at the County aforesaid did Carry on the trade and business of a Dram Shop Keeper and did then and there unlawfully sell intoxicating liquors in a less quantity than one quart without then and there having any license therefor according to law, Contrary to the form of the Statute in such Case made and provided and against the Peace and dignity of the State. N. Holmes Circuit Endorsed A true Bill W. VonPhul foreman.. County of St Louis ss:

Capias The State of Missouri, To the Marshal of the County of Saint Louis. Greeting: We Command you as before to take John Crowley if he be found in your bailiwick and him safely Keep so that you have his body before the Honorable Judge of the Saint Louis Criminal Court, on the first day of the next term thereof to be began and held at the City of St Louis, within and for the County of St Louis on the first Monday of September next then and there to answer an Indictment found against him by the grand Inquest of the State of Missouri for the body of the County of Saint Louis for Keeping a Dram Shop without license Contrary to the form of the Statute in such Case made and provided and against the Peace and dignity of the State: and have you then then this writ with your return thereon how you execute the same. &c

Witness Lewis F. Lacy Clerk of our said Court with the Seal thereof hereto affixed at the City of Saint Louis this 29th day of July in the year of our Lord eighteen hundred and forty six, Lewis F. Lacy Clerk.

Returned Executed this writ in the County of St Louis on the 31st day of July 1846. by arresting the body of John Crowley and he was on the same day discharged by entering into a recognizance

according to law. Wm S McKnight Marshal By D P McCullough Deputy.

Recognizance State of Missouri County of St Louis ss. Be it remembered that on the thirtieth day of July in the Year of eighteen hundred and forty six personally came before the William S McKnight Marshal of the County aforesaid John Crowley as principal and Dennis Crowley as security and acknowledged themselves each to owe the State of Missouri the sum of one hundred dollars to be levied of their respective goods and Chattels, lands and tenements, upon Condition nevertheless that if the above bounden John Crowley shall personally appear before the St Louis Criminal Court on the first day of the next term thereof to be holden for the County of St Louis on the first Monday in September eighteen hundred and forty six then and there to answer an Indictment preferred by the Grand Jurors of said County against him for keeping a Dram Shop without license and shall not depart the said Court without leave thereof then this recognizance to be void, else to remain in force. John Crowley Dennis his x mark Crowley. Taken and Certified the day and year aforesaid Wm S. McKnight Marshal By D P McCullough Deputy

The State of Missouri } Dram shop. Wednesday 9th September 1846.

Trial John Crowley } Now at this day comes as well the Circuit attorney who prosecutes for the State as the said defendant in his own proper person who enters his plea of not guilty to said Indictment and for his trial puts himself upon the Country and the Circuit attorney doth the like, thereupon Come a Jury to wit, Philip Skinner, Albigence Haywood Charles L Hunt Abner Stone David S Jameson James P Langley, Charles N Lewis A G Dunn William C Corley Hugh Lackey, Frederick Lynch, Thomas L Amiss, twelve good and lawful men who being duly elected tried and sworn the traverse between the parties aforesaid well and truly to try upon their oath aforesaid do say that said defendant is guilty in manner and form as Charged upon him in said Indictment.

The State of Missouri } Dram shop. Saturday 12th September 1846.

motion John Crowley } Motion in arrest and for new trial filed.

The State of Missouri } Dram shop. Monday 21st September 1846.

Sentence John Crowley } Now again come the parties aforesaid the Court being sufficiently advised what Judgment to render in the premises, therefore it is Considered by the Court that said defendant for his offence aforesaid pay to the State of Missouri for the use of the County of St Louis a fine of One hundred dollars, that he pay the

costs of this prosecution and stand committed until this sentence be complied with

The State of Missouri Dram shop. Tuesday 22nd September 1846.

mo overruled John Crowley I Now again come the parties aforesaid and thereupon the motion of said defendant in arrest of Judgment and for his new trial are by them submitted to the Court which being seen and heard and by the Court here fully understood it is considered by the Court that said motion be overruled.

The State of Missouri Dram shop. Saturday 26th September 1846.

appeal John Crowley I Now comes the said defendant in his own proper person and files his bill of exceptions and prays the Court for an appeal to the Supreme Court from the Judgment herein rendered which is granted and thereupon the said John Crowley, as principal and Dennis Crowley as his security acknowledged themselves each to owe the State of Missouri the sum of three hundred dollars to be levied of their respective goods and Chattels lands and tenements yet upon Condition that if the said Crowley shall appear before the Supreme Court at the next term thereof to be holden at the City of Jefferson on the third Monday of October next to receive Judgment on his appeal and also in this Court at such time as the Supreme Court shall direct and shall render himself in execution and obey every order and Judgment that may be made in the premises, then this recognizance to be void otherwise of full force, And on motion of said defendant it is ordered that the Judgment in this case be suspended for sixty days in order to give the defendant an opportunity of applying to the Supreme Court or some Judge thereof for a Supersedeas

Bill exceptions State of Missouri In the St Louis Criminal Court September Term 1846

John "Crowley I St Louis County ss: Be it remembered that at the last July Term of this Court the Grand Jurors of said County found an Indictment against the said John Crowley which is as follows. "The Grand Jurors for the State of Missouri & for the body of the County of St Louis upon their oath present that John Crowley late of the aforesaid gentleman on the Second day of June in the Year of our Lord one thousand eight hundred and forty six at the County aforesaid did Carry on the trade and business of a Dram shop Keeper and did then and there unlawfully sell intox=icating liquors in a less quantity than one quart without then and there having any license therefor according to law Contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State N Holmes Cir atty" to which the defendant

pleaded not guilty & afterwards towit at the present term of this Court to which time the trial of said Indictment was Continued a Jury was duly sworn to try said Cause and the State called as witness the following persons, Frederick Heeman who being duly sworn says I Know defendant he Kept a Family Grocery Liquor Shop on the Levee, Kept a regular bar with bottle decanters &c inside the Counter, saw Intoxicating liquor sold there by the glass in June & July last John Crowley was the Keeper of the house it was on the levee in the City of St Louis — James Parker Knew the defts bar, had seen liquors drank there by the glass, Left acted behind the Counter, heard money & saw it thrown on the Counter, did not see deft take it up, saw it nearly every night in May last, — William Boardman — being duly sworn said — I Know the deft he Kept a Coffee house on Levee, prior to 22nd of July last, I have seen men standing near the bar drinking, saw money on the Counter, there was a sign board "Grocery & Boarding" The foregoing was all the testimony given the Jury hearing deliberated rendered the following verdict, "State of Missouri vs John Crowley — We the Jury find the defendant guilty and request the Court to affix the fine "Hay wood Foreman" within four days after the rendition of said verdict at the present Sept. Term of this Court the Defendant filed the following motion & reasons in arrest & for a new trial (Now now Comes the said defendant & moves the Court to set aside the verdict in this case & grant him a new trial for the following reasons towit. First Because the verdict was against the law and evidence in the cause, 2nd — Because the verdict was against the weight of evidence, 3rd — Because the Court erred in giving wrong instructions to the Jury. 4th — Because the Court permitted incompetent & irrelevant testimony to go to the Jury — 5th — Because the Court erred in refusing instructions asked for by the deft. Blennerhasett & Simmons attys for deft. And now comes the said defendant & moves the Court to arrest the Judgment in this for the reason that the Statute upon which this indictment is framed is unconstitutional null & void & that no legal judgment can be given thereon Blennerhasett & Simmons attys for deft." which being duly Considered by the Court the same are overruled to which decision the defendant then and there duly excepted & prays the Court that this his

bill of exceptions may be sealed & signed & made a part of the Record in this cause which is accordingly done. A W Manning (Seal)

Judge of the St Louis Criminal Court

State of Missouri } ss.
County of St Louis } I Oliver Harris Clerk of the Saint Louis Criminal Court for the County aforesaid Certify the foregoing to be a full true and perfect transcript of the Record and Proceedings of said Court in the above entitled Cause as the same remains of Record in my office.

In testimony whereof I have hereto set my hand and affixed the seal of said Court at office in the city of St Louis this Seventh day of October in the year of our Lord eighteen hundred and fifty six

Oliver Harris, Clerk

(62.)

~~131.~~

State of Missouri
v.
John Crowley } Dram Shop.

Transcript $1.91
Certif & Seal 50
2.41

Filed Octo 19th 1846.
H. L. Boon
Clk

In Sup. Court

William Moore vs The State
Michael Revel " "
Michael Fallahee " "
Henry Morris " "
John Brady " "
James Gilligan " "
John J. Cousineau " "
Patrick Neals " "
William Mulchy " "
Michael Finnegan " "
Terrence Brady " "
John Rogers " "

The above named cases are appeals from the St Louis Crim. Court. The point relied upon by the appellants to reverse the judgments of the Court below are principally as follows.

1st The indictments are materially defective. They contain charges which do not constitute the Statutory definition of the offence, & are in consequently rendered vague & uncertain in meaning.

Although this point is not particularly preserved & presented in the Bill of exceptions yet it will be contended that in accordance with the 16th Section of the 8th Article of the Statute regulating practice in Criminal cases, it becomes the province of the Court in Criminal cases, to decide upon the whole record, ~~without the necessity~~ & that it is not required as in civil cases that all point to be reviewed in this Court, must be raised in the Court below. The Court therefore will not affirm a judgment if it shall appear to have been

founded on an insufficient indictment

2d In many of the cases convictions were had without proof that of any act of selling In all such cases it is contended that the verdict was against the weight of evidence. The point is was raised by asking instructions in the case of William Mulcahy which were overruled.

3d It is insisted that the license laws of this State including the Statute upon which these indictments are framed, impose an onerous discriminating tax upon many articles of personal property without regard to their value, and are restraints upon the exercise of trade, and are violations of the meaning & letter of the Constitution of the State.

I am not aware of any decision of this Court which settles the question last advanced, A case in the Sup. Court of the United States, set for re-argument, involves if I mistake not, a similar State of fact & the principles of law arising upon them, are the same as in these cases. If a decision in the U. S. Sup. Court, be given before the next term of this Court, it is expected that it will have some influence in the determination of the cases here presented.

As the parties here entered into bonds to abide the decision of this Court, it seems to me, that no injury can result to the

State by granting them a Stay of proceedings until the next term of this Court upon a renewal of their recognizances.

Neither do I think it is opposing too much to place the matter upon the footing of right, as they have been prevented by a combination of unforeseen circumstances from obtaining a hearing at this term.

The transcripts were not made out in time for this term, but if they had been it is now plain that the case would have been the same.

In view of the foregoing state of facts, an application for a Stay of proceeding in the above entitled cases until after the next term of this Court is respectfully made, and it is also requested that ~~an order~~ a copy of the order granting the same may be forwarded to the Clerk of the St Louis Circuit Court, properly certified under the seal of this Court.

C. C. Simmons
Atty for Appellants

To the Hon. Wm. Scott
Judge of Sup Court