Watkins, Luke W. vs State of MO 18344 2nd 96/18

State of Missouri
County of Ralls

Pleas before the Honourable Priestly H. McBride Judge of the Second Judicial circuit in and for the State of Missouri and the Judge of the Ralls Circuit Court at the Court house in the town of Newsondon the place appointed for holding Said Court in & for Said County On the 2nd day of June it being the first Monday in Said month A. D. 1834. On the 4th day of Said Court the following proceedings were had Towit

Lewis Garnett
vs
James Fuqua

On appeal from the Judgment of a Justice of the peace

Upon the calling for trial of the above cause the attorney for the defendant gave the Court to understand and be informed that the record in this cause, has been mutillated and altered, in this - the year on which the trespass complained of in the declaration is alledged to have been committed has been altered from the year 1833 to the year 1832 - that this alteration has been made since the commencement of the present term of this court; and that he believes and alleges the said mutillation and alteration to have been made by Luke W. Watkins the plaintiff's attorney and an attorney & counsellor at law of this Court - The Court thereupon propound, in writing, the following interrogatories to the Said Luke W. Watkins and require from him an answer, under Oath thereto. Do you know whether the date of the alledged trespass in the plaintiff's declaration by him filed before the Justice of the peace, has been altered or changed since the commencement of the present term of this Court? Do you know who procured the making of the above named alteration? Do you know who made the alteration above named? Who procured the making of the alteration? Who made the alteration? What object was intended to be effected, by making the alteration?

And afterwards towit, at the same term last aforesaid on the 23rd day of Said Month it being ~~[illegible]~~ the last day thereof

the following proceedings were had Court,

Luke W. Watkins, an attorney at law of this Court, now on this day it being the last day of the present term of the court, comes into court and refuses to answer upon Oath the interrogatories heretofore filed against him by our Judge; it is therefore considered & Ordered by the court, that the said Luke W. Watkins, be and he is hereby suspended from practiceing, as an attorney and Counsellor at Law, in this court, until the end of the next term of the Supreme Court to be begun and held within and for the Second Judicial district of the State of Missouri - and it is further Ordered, that the Clerk of this Court, make out and transmit to the Clerk of the Supreme Court, for said district a certified transcript of the proceedings herein -

State of Missouri } Set
County of Ralls }

I Charles Glascock Clerk of the circuit Court within and for said County of Ralls do certify that the foregoing contains a true & perfect transcript of the proceedings had in our said Court in the case of the suspension of Luke W. Watkins an attorney at law of this court from practising as an Attorney and Counsellor at law in this Court as fully and as amply as the same remains of record in our said Court -

In testimony whereof I the clerk aforesaid have hereunto set my hand and affixed my official seal at office this 15th day of August A. D. 1834 -

Charles Glascock Clerk
by his deputy
Harrison Glascock

Clerks fees

Copying Record of 400 words at 10cts per 100	$.40
Certifice & seal .50cts State Tax .62½	1.12½
	$1.62½

State of Missouri (1)
vs } Order of Suspension
Luke W. Watkins -

Filed in Clerks Office of Supreme Court August 18th A.D. 1834.

Levi Pettibone Clerk

State of Alabama } Supreme court August Term 1834
vs } Order of suspension from practice
Luke W Walker

And the said Luke W Walker in answer to said order of suspension, and for reasons why he ought not to have been or to be suspended from practice as attorney and counsellor at law shows cause against said order and says - That he did not so mutilate and alter said record during said term in manner & form as alledged against him - but he says that according to the best of his knowledge and belief the facts were that - The said suit of Garrett vs Fuqua was brought against said Fuqua a constable for illegally retaining property after having levied on the same by virtue of an execution - In writing the declaration, in said order mentioned, said Walker not having said execution before him was unable to ascertain its date - and hence he left the date blank - except the year - 1833 - At the trial of said cause before the justice of the peace leave was given to him by said justice of the peace to amend said declaration by inserting the proper dates - but he was still unable to procure said execution whereby to alter the dates as aforesaid - and afterwards in pursuance to such leave granted by said justice he inserted the day of the month and altered the year - 1833 - to - 1832 - which he did believe he had a right to do

And the said Mathews further states as a reason why he did not answer said interrogatories so propounded to him by said Judge — That no evidence as to the truth of said allegations — they being the mere suggestions and allegations of the defendants attorney without being put upon oath — — And he also says that he did not believe that he was bound by the laws of the land to answer the same as set forth — That he did not refuse to answer the same as aforesaid for the purpose of showing contempt for the legal authority of said Judge to whom he is ever ready to pay such deference as he may be in duty bound to pay —

And he prays this Honorable Circuit to make their order upon said circuit court to dissolve said order of suspension — and to do such other things as shall seem right and just to this Honorable court — pertaining to said case —

Luke W. Mathews

Subscribed & Sworn to in Open Court
August 20th A.D. 1834
Levi Pettibone Clerk Supreme Court

State

vs } answer

Watkins

— " — " —

Filed in Court August
20th A.D. 1834 —
Levi Pettibone Cont

The State vs Watkins } Opinion of the Court

It appears by the record that in the Circuit court of Ralls County Ezra Hunt an attorney of that Court gave information to the Court that certain dates in a record had been altered & that he believed and Charged the fact to be that Watkins Also an attorney of that Court had altered the same Whereon by Order of the court certain interrogatories were propounded to Watkins Which he declined to Answer The court thereupon suspended him from practice for a certain time and certified the proceedings to this court

The question is now made whether the court erred the are of Opinion the Order as it stands must be set aside the law is express that the cause of suspension must be in the Order itself which is not the case here The Order should allege the precise cause for which the suspension is made In this case if it were proved that this man had altered the record ~~with a [illegible]~~ then the the Order should shew that fact and then the suspension should follow

The requisition of the Court that the party should answer an Oath should be good on a pure question of contempt This requisition is not to

to accuse the party but to let him purge him
self if he can after the act has been otherwise
established The regular proceeding in this case would
have been when the information was given to
have issued a rule or citation to call on the
party when the act was done out of the pres
ence of the Court to shew cause why he should
not be suspended for the act complained of
when the contemp is committed in the presence of
the court a rule is sufficient and -
when the party appears proof is made of
the facts then the order of suspension or
a discharge of the rule is made as the proof
warrants

The order is set aside the cause is
remanded the circuit Court will proceed
with the proof &c without any new
notice to the defendant

M. M. Gish
George Tompkins
Wash

State
vs
Watkins

Judge McGirk delivered the opinion of the Court.

Filed in Court August 26th 1834.
Levi Pettibone Clerk

State
vs
S Wadkins

On a suspension from the liberty of practising as an attorney & councelor at law in the courts of Record in this state.

From the Rolls Cir Court 1834
June Term 1834

Upon the calling of a cause between Garnett ~~and~~ vs Fuqua the Defendant's Council alledged to the court that the reccord from the justice of the peace was altered after the commencement of the term and that such mutulation was made by the Defendant Wadkins - ~~the~~ an attorney and councelor of the court. The judge of the court there upon propounded interogatories. varying the question in relation to the mutulation or alteration so as to give the party an opportunity of replying. This was upon the first day of the term the 2nd day of June. Sometime afterwards the court was adjourned and upon the last day of the term (June 23) Wadkins came into court and refused to answer under oath the interagatories and thereupon the court ~~or~~ order him to be suspended untill the end of this term of this court.

At this term Wadkins appears and files under oath in this court an answer to the ~~interogatories~~ interogatories admitts that he altered the record during the term and that he done it by virtue of a leave obtained ~~before~~ from the justice of the peace on a trial before the justice - some time before the case came to the circuit court and that he thought he had a right to do so

As a further reason he says that the allegations were not made under oath and no evidence of their truth to the circuit court. and that ~~for the~~ by the law of the land he was not bound ~~by~~ to answer the interogatories as filed. And then denys the he refused to answer for the purpose of commiting a contempt on to that court.

The following points ~~[illegible]~~ are relied upon to continue the suspension

1. By the answer Wadkins shews that he has been guilty

of a flagerant abuse of his privilege as an attorney and the reason is not such as sustaing the assertion that he believed he had a right to do what he did But the fact was not as stated at least when the suggestion was made the justice of the peace and the other attorneys engaged were called ~~and~~ upon ~~oath~~ ~~made~~ to state what they knew in relation to the condition of the record and the alteration. and the justice stated on oath and I think the others also what they knew concerning the matter. But this matter will properly come up when the accused offers his testimony

The second cause of refusal is that the allegations of the Defendants attorney ~~were not~~ Mr Brent were not sworen to. The record does not say whether they were sworen to or not but the record says that the Defendants attorney gave the court to understand and be informed. Now the court cannot be informed or understand a ~~to~~ fact except upon legal testimony and such I think must be the presumption in this cause. No exception of this kind appears to ~~have~~ have been taken below

In the third instance he says he was not bound by the law of the land to answer the interogatories as set forth. I do not know upon what ground this exception is taken nor does the record shew any thing of such an exception having been taken below. From intimations ~~below~~ I suppose it is upon the ground that he is not bound to convict himself of a crime The interogatories do not charge him with the commission of any offence it is only for the information of the court to ascertain the true situation of the record and although he had answered in the affirmative yet would not necessarily lay him liable to the penalties of the 28 sect of the act concerning

crimes and misdemeanors.

Besides I think this exception ought to have been made to the Court below ~~and~~ as that would have shewen that it was not out of contempt to the court but a sense of danger that he refused to answer. But neither this nor any other exception was taken below

From the fact that attorneys must frequently have the possession of the papers of the court out from under the supervision of the court or clerk the ~~power~~ court must necessarily have the right to require under oath of them concerning the same and their condition. and a refusal to answer such questions certainly amounts to a contempt of that court

A B C Moultrie
Dist Atty

State June 1834
vs } Pltff Brief-
Watkins.

On ~~a motion~~

State of Missouri } Supreme Court Aug 5: 1834
vs } Order of suspension — from the
Luke W Watkins } Ralls circuit court

This was an order, made by the Judge of the Ralls circuit court at the June Term thereof 1834 for suspending Luke W Watkins an attorney and counsellor at Law from practising as such in the circuit court, untill the end of the term of this court —

The record in the case set out substantially that upon the calling of the case of Garnett vs Fuqua (an appeal from Justice Peace) the attorney for the defendant gave the court to understand and be informed that the record in that case had been mutilated and altered during that term in this — that in the declaration filed before said Justice the year 1833 had been changed to 1832 — The informant also stated that he believed the alteration had been made by said Watkins who was the plaintiffs attorney —

The Judge of said court then propounded to Watkins the following questions which he required him to answer under oath —

Do you know whether the date of the alleged trespass in plaintiffs declaration by him filed before the Justice of the peace, has been altered or changed since the commencement of the present term of the court? Do you know who procured the making of the above alteration? Do you know who made the alteration above named? Who procured the making of the alteration? What object was intended to be effected by making the alteration? —

The record in this case further sets out that ~~said~~ Luke W Watkins an attorney and

at law of that court, came into court and refused to answer upon oath the interrogatories heretofore filed against him by the Judge — and — it was therefore considered and ordered by the court that said Watkins be suspended from practicing as an attorney and counsellor at law in that court untill the end of the present term of the supreme court —

Said Watkins has appeared and answered to the order of suspension, sworn to in open court, by which he says that he did not so mutilate and alter said record during said term as alleged against him — He states as a reason why he did not answer the interrogatories — That there was no evidence as to the truth of the allegations — they being the mere suggestions of the defts attorney without being put upon oath — That he did not believe that he was bound by the law of the land to answer them as set forth — That he did not refuse to answer them for the purpose of showing contempt for said Judge the legal authority of for whom he is even ready to pay difference as he is in duty bound to pay — And he asks this court to make their order to dissolve said suspension —

1st The cause of suspension is not stated in the order as required expressly by the statute (1 vol. 159 - sec 7 -)

2d The facts of the case did not warrant the judge in making the order of suspension —

1st The alteration of a record as alledged against the defendant amounts to a felony — the statute does not empower this court to strike an attorney from the roll for a felony untill convicted thereof ~~the defendant~~ there was no proff of defendant having altered the record, nor was there a conviction — therefore he was not liable to be stricken from the roll for that cause — the circuit court have no power to suspend an attorney from practice unlesse he has been guilty of misconduct which in the opinion of the circuit court is such as to justify his being stricken from the rolls — the alleged alteration of said record was not suffient to justify his being stricken from the rolls, therefore the circuit judge had no right or authority to suspend him from practice on account of the allegation —

(2d) A court cannot punish for a contempt when the act amounts to an indictable offence

the alteration amounts to an indictable offence and therefore if he had even been guilty of altering the record as alledged against him it would not have amounted to a contempt of court — hence the Judge had no authority to suspend him for contempt in altering the record —

Summary convictions are inferior to convictions by indictment — it is a principle of law that minor offences are merged in the major, ~~and~~ the punishment for contempt is a summary conviction, therefore an indictable offence can not be punished in that mode —

3d — 1st The allegation of altering the record is untrue — the order only shows an assertion of the fact by an attorney who was not under oath — nor does it appear that the person who made the allegation was an enrolled attorney — The law permits a man to appear in court by agent — an agent is an attorney in fact — it is a principle in law that the court will construe the more favorable for the accused — therefore this court is bound to presume that the person who alledged the alteration of the record was a mere attorney in fact, whose charges against an officer of court ought not to have been listened to by the circuit court without his being sworn to the truth of such charges —

(2d), The allegation in the order is that the record was altered during the term of the court — and the defendant says in his answer under oath that he did not so alter it — and thus stands completely purged of the charge, there being no evidence to the contrary

— 4thly

Defendant was not guilty of a contempt of court in not answering the interrogatories put to him by the Judge —

1st

He was not bound by law to answer them — the offence which they sought to disclose was indictable — had he been guilty, his answer might have tended to his conviction — they sought to compel him to give evidence against himself — the ninth section of the thirteenth article of our state constitution says — that the accused can not be compelled to give evidence against himself — therefore he was not bound to answer the interrogatories —

(2d), Contempt implies misdemeanor, there is no misdemeanor in not doing what we have a right not to do — If the court ignore

an illegal command there is no contempt in disobeying such command — the interrogatories were an attempt to compell the accused to give evidence against himself — and hence illegal — therefore there was no contempt in refusing to answer them —

5th If it had been a contempt it was not sufficient to justify this court in striking the defendant from the rolls and therefore the circuit court had no right to suspend him

1st The power of striking an attorney from the rolls should not be used by the court except in extreme cases — The statute provides (1 vol — page — 274 — sec — 19) empowers the courts to punish for contempts committed towards such court by fine and imprisonment and the case must be extraordinary in which this will not prove sufficient to maintain their authority and dignity —

2d Notwithstanding the act concerning Attorneys and counsellors at law says that this court shall have power to strike an attorney from the roll for a contempt of court — (sec — 6 in said act) still, the fact whether such contempt is of sufficient magnitude to

justify this court in striking the accused from the rolls must be ascertained by a jury —

The constitution not only provides that the right of trial by jury shall remain inviolate but the 9th section of the 13th article says that the accused cannot be deprived of liberty or property but by an impartial jury, or the law of the land — the constitution of the United States is the law of the land, and it declares that in suits at law where the value in controversy shall exceed twenty dollars the right of trial by jury shall be preserved — the office of attorney and counsellor at law is a franchise implying property of greater value than twenty dollars and therefore the fact of forfeiture must be ascertained by a jury —

6th

That it is infeasible from the statute covering attorneys and counsellors at law that crimes and misdemeanors of sufficient magnitude to justify this court in striking an attorney from the rolls — when the case originates in the circuit court must be there ascertained by a jury before the circuit court can suspend an attorney —

J P Wright

Attorney for Deft

any 1834

State vs Walking

order of Dashenson

100

Deffendants Creep