State of Missouri vs. Hambleton, Montravill 1859 Polk Co. 7th Cir. 240/12

Old 84/26

Affirmed disturbing the peace see State vs. Tilton & State vs. Cowan

Ran horses through public streets

H fined $5 by J of P under county law, then tried under state law

Be it Remembered that at a regular term of the Circuit Court of Polk County in the State of Missouri begun and held at the Court House in Bolivar in said County on the 24th day of October 1857 a Bill of Indictment was then and there made and presented to said Court in words and figures following Towit

" State of Missouri }
County of Polk }
In the Circuit Court of Polk County Oct Term 1857.

The Grand Jurors for the State of Missouri summoned from the body of the County of Polk empannelled charged and sworn to inquire within and for the body of Polk County aforesaid upon their oath present

That Burton Potter and Montraville Hamilton late of the County of Polk and State of Missouri on the first day of July AD 1857 at the County of Polk aforesaid did then and there Wilfully and unlawfully run their Horses upon a public road and highway in common use in the State of Missouri Lowit at the County of Polk aforesaid so as then and there to interrupt travellers thereon Contrary to the form of the Statute in such case and against the peace and dignity of the State

J W Freeman
Cir Atty

A true Bill
William H. Newland
Foreman of the Grand Jury

And afterwards Towit at a Circuit Court began and held within and for the County of Polk in the State of Missouri on the 13th day of April 1858 the following proceedings among others were had Towit

" State of Missouri } Indict for running
vs } Horse on public
Montraville Hamblton } highway

Now at this day comes the said Defendant by his attorney and files herein his plea in the nature of a plea in abatement and the Circuit atty files herein a Demurrer, And afterwards Towit at the Court aforesaid Continued and held within and for said County of Polk on the 14th day of April 1858 the following proceedings among others were had Towit

" State of Missouri } Indict for riding
vs } Horse on highway
Montraville Hamblitow }

Now at this day comes the Circuit Attorney and the said Defendant by his Attorney and the Demurrer filed to the plea of former acquittal filed in this cause coming on to be heard and being heard and fully under=stood was by the Court over=ruled and thereupon the Circuit Attorney tenders his Bill of exceptions which is signed sealed and ordered to be filed and enrolled as forming a part of the Record in said cause

And which Bill of Exceptions so signed sealed and enrolled as aforesaid is in the words and figures following Lauch

State of Missouri } In the Circuit
County of Polk } Court of
Polk County

State of Missouri pltff
vs
Montraville Hamblton Deft

Be it Remembered that at the present Term April 1858 the Defendant filed his plea as follows Towit

State of Missouri } In the Circuit
vs } Court of
Montraville Hamilton } Polk County

And the said Defendant in his own proper person comes here into Court and having heard the Indictment read saith that the State of Missouri ought not to further prosecute the said Indictment against him

Because he says that on the 26th day of September 1857 the Sheriff of Polk County acting for the Corporation of the Town of Bolivar in said County of Polk arrested said Defendant for running a Horse on a public highway in said Town so as to interrupt passengers thereon and brought the body of said Defendant before Ellis G. Blake a Justice of the Peace of Marion Township in Polk County at his office on the 26th day of September 1857 there being then no Magistrate or Justice of the peace of said Corporation the same having resigned to be dealt with as the law directs and the said Sheriff gave information to said Justice that said Defendant had run his Horse on a public highway

in said Corporation so as to
interrupt passengers thereon
and the said Defendant
having run said Horse
in the presence of sd. Justice
On the 26th day of September
1857 said Justice proceeding
to try and determine the same
According to law and the evi
=dence being heard and said
Defendant plead guilty thereto
of said Offence the said
Justice of the Peace fined said
Defendant for said Offence
Five Dollars besides Costs
And it was Considered by said
Justice that the State of Missouri
recover of said Defendant
said sum aforesaid for said
Offence and also the Costs by
said State of Missouri in that
behalf expended and that he
remain in custody until
said Fine and costs are
fully paid and said Def
=endant says that he has

fully paid and satisfied
said Fine and Costs and
said Sheriff was ordered to
discharge him from his im
=prisonment and he was
permitted to go hence without
day The said Warrant was
executed by said Sheriff by
arresting the said Defendant
and taking his body before
said justice at his office in
Bolivar on the 26 day of
September 1857 as by the
Record of said justice more
=fully appears a copy of which
is herewith filed and made
part hereof and the said
Defendant says he has been
tried and convicted for
said offence and that he
the pet Deft is the identical
person convicted and
discharged by said justice
as aforesaid and not other
or different persons and

that the running of said Horses
on a public highway as afore
said for which he was tried
and convicted before said
Justice and the running of a
Horse on the public highway
mentioned in said Indict
=ment are one and the same
offence and not other or
different and this he the
said Defendant is ready
to verify. Wherefore he prays
Judgement and that by the
Court here he may be dis
=charged and dismissed
from said Premises in the
present Indictment specified
and the said Defendant
says that by the laws of the
Corporation of the Town of
N Bolivar which was then
and there a town incor
porated according to law
that any person who
should run a Horse on a
public highway in said

Corporation should be taken by the Constable of said Corporation or the Sheriff before some Justice of the Peace of said Corporation if any in office and if no Justice of the Peace of said Corporation before some other Justice of the peace of Marion Township in Polk County, without warrant and that for said running of a Horse as aforesaid in said Corporation should be Fined by said Justice of the peace in a sum not less than two nor more than Five Dollars which Ordinance was passed and approved March the 4th 1856 and is in the words and figures following Towit

"14 And be it ordained by the bord of Trustees of the Town of Bolivar if any

person or persons shall ride furiously through the streets alleys or around the public Square by galloping or running any Horse or other animal or shall drive any Vehicle in a furious or unbecoming manner within the limits of the town of Bolivar, shall be deemed guilty of a violation of this ordinance and such person or persons shall be fined in a sum not less than two or more than Five Dollars or be imprisoned not more than Five days or by both such Fine and imprisonment together with costs for each offence

Approved March 4° 1856

Attest M. G. Devin Mayor

John Harrison Clerk "

and said Act entitled an Act to incorporate the Town of Bolivar Polk County

was passed and approved
On the 13 December 1855
Montraville Hamilton

The above named Deft
makes oath and says that
he believes the facts stated
in the foregoing plea are
true his
Montraville + Hamilton
mark
Sworn to and subscribed
before me this 13 day of
April 1858
J. W. Davis clk "

And the State filed her Demurrer
to said plea which said
Demurrer is in words and
figures as follows Towit

" State of Missouri } In the Circuit
County of Polk } Court of Polk
County
April Term AD 1858

State of Missouri
vs
Montraville Hamilton

The circuit attorney comes and says the said plea is insufficient in law and assigns as cause of Demurrer the following

First there is no averment that the town of Bolivar were ever legally organized

Second The town authorities of the Town of Bolivar had no jurisdiction of the offence for which said Montraville Hamilton now stands indicted

Third Even if Justice Blake had tried and fined said Defendant for a violation of a city ordinance yet if there was a violation of the laws of the State in addition the State has her Prosecution

Fourth By the incorporation of the Town of Bolivar the State lost no rights neither did she surrender or delegate any of her powers to the City of Bolivar

T. W. Freeman
Cir Atty

Which Demurrer the Court Overruled to which ruling of the Court the State excepted and prays this his Bill of Exceptions may be signed sealed and made part of the Record which is accordingly done

Dewitt C Ballou (Seal)

State of Missouri }
County of Polk }

I Israel W. Davis Clerk of the Circuit Court of said County do certify that the foregoing is a full true and Couple Transcript of the Record and proceedings of said Court in said cause as the same now remains of Record in my said Office

Given under my hand with the seal of said Court affixed at Office this 16th day of May 1859

I. W. Davis clerk

Clerks fees $4.80

~~49.~~ ~~38.~~
78

State of Missouri app

vs Record
M Stambleton

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aff
March 17th 177

filed May 27th 1859
Wm E Dunscomb
Clerk

Polk 7th

State of Missouri vs Hamblin

For my opinion in this case see my opinion filed in the case of The State of Missouri vs Cowan, decided at this term

W Scott

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State v Hamilton

Judge Scott's opinion

affirmed

filed March 17 1840

Wm E Drummond

Clerk

In the Supreme Court
July Term 1859

State appellant.
v/z appeal from Polk
Hambleton.

This case is in all respects similar to the case of the State v Silton. and the same questions are involved in both.

No 38

State appt.
v
Hambleton