State of Missouri vs Miller v. John 1855 Stoddard 372/7

585/13

Scott
R&R

Sold w/out license .5 lb black pepper
" alspice
10 lb Sugar

indictment quashed b/c no price

Record of the Pleas, Proceedings, Orders and Judgments of the Circuit Court for the County of Stoddard in the Tenth Judicial Circuit of the State of Missouri, began and held at the Court House in the Town of Bloomfield in Stoddard County aforesaid, on Monday the 20th day of March in the year of Our Lord Eighteen hundred and fifty four, before the Honorable Harrison Hough Judge of the Circuit Courts of the Circuits aforesaid.

Be it remembered that on the 23rd day of March A.D. 1854, in the said Circuit Court, before the Honorable Harrison Hough Judge, among others the following Proceedings were had, to wit,

Book C Page 47.

"The Grand Jury returns herinto Court the "following bill of Indictment to wit

"The State of Missouri } Indictment for dealing as
" Versus } a Merchant without License.
"John Miller

" A true Bill "

Which said Indictment is in Words and figures following, to Wit,

"State of Missouri, Tenth Judicial Circuit — SS
"In the Circuit Court for the County of Stoddard "in the State of Missouri at the March Term of said "Court A.D. One thousand Eight hundred and fifty "four. The Grand Jurors of the State of Missouri im= "pannelled and Sworn to inquire in and for the "body of the County of Stoddard upon their Oath do "present, that John Miller late of the County of Stoddard "in the said State of Missouri, on the first day of March "A.D. One thousand eight hundred and fifty four, at "the County of Stoddard in said State of Missouri, did then

" and there, at a certain Store, Stand or place occupied
" for that purpose deal in the Selling of goods, Wares
" and Merchandise not the growth produce or manu=
" facture of the State of Missouri, to wit, he the said
" John Miller did then and there Sell one half pound
" of black pepper, one half pound of Alspice and ten
" pounds of Sugar without then and there having
" any License first had and obtained_ authorizing
" him so to do, against the peace and dignity of
" the State of Missouri. _____
" _____ H H Bedford Circt. Attay."
And afterwards, to wit, on the 19th " day of September
AD 1854, at the September Term AD 1854, of the
Circuit Court of said County of Stoddard, before
the Honorable Harrison Hough Judge, the following
proceedings were had in said Cause, to wit,

Book C. Page 65

" The State of Missouri } Indictment for dealing as a Merchant
" Versus _____ } without License. _____
" John Miller _____ } The Circuit Attorney, and the
" said defendant comes and the said defendant
" moves the Court to quash the Indictment in this
" Cause on reasons filed." Which said Motion and
reasons filed are in words and figures following to wit,
" State of Missouri } _____
" vs } Indictment for dealing _____
" John Miller } The defendant demurs to the Indict
" ment in this case and moves the Court to quash
" it for the following reasons _____
" 1st " The Indictment does not Set forth the Circumstances
" connected with the offence. 2nd " The Indictment does
" not allege that the articles charged to have been
" Sold by defendent were not the the growth produce
" or manufacture of this State. 3rd " The Indictment is
" not Sufficiently definite in this, it does not allege

"the Offence and the Circumstances connected with
"with it in such a definite manner as to enable the
"defendant to plead it bar to another Indictment for
"the same act. _____ Jackson for Deft." ~~Wher~~
"Whereupon the Court doth Order that said Indictment
"be quashed; to which opinion of the Court quashing
"said Indictment the Circuit Attorney excepts and
"files his bill of exceptions which allowed and made
"part of the record; and the Circuit Attorney prays
"an appeal to the Supreme Court which is granted."
Said bill of exceptions filed by said Circuit attorney
as aforesaid is in words and figures following, to wit,
"State of Missouri } Indictment for dealing as a
" vs _____ } merchant. _____
"John Miller } Be it remembered that when
"this cause came on to be heard the defendant
"moves the Court to quash the Indictment in this
"cause for reasons filed, which said motion to
"quash said Indictment was by the Court sustained
"to which said decision of the Court in sustaining
"said motion and quashing said Indictment
"the Attorney for the State excepts and tenders this
"his bill of exceptions which asks may be signed sealed
"and made a part of the Record herein, which is done"
_____ H. Hough (Seal)

State of Missouri } SS.
County of Stoddard } I Reuben P Owen clerk of the
Circuit Court within and for the County and State aforesaid
do certify the foregoing to be a full true and perfect
transcript of the Record and proceedings in the
case of The State of Missouri versus John Miller
as the same appears now remaining in my
Office.

In Testimony whereof I have here

unto Signed my name and affixed the
the Seal of said Court, at Office in
Bloomfield County & State aforesaid this
11th day of May AD 1855
Reuben P. Owen Clerk

46 ~~27~~

13 Oct. Term 1856
The State of Missouri
Appellant
vs
John Miller
respondent.

Appeal from Stoddard Cir. Court.

Filed 18th May 1855
Wm. J. Glanville
Ck.

Postage ~~[illegible]~~ 6+9=15

~~27~~ 46

In the Supreme Court of Missouri
October Term 1855. —

The State of Missouri } Appellant
vs
John Miller } Respondent

Appeal from the Circuit Court for the County of Stoddard.

Indictment for dealing as a Merchant without License under Act to license and tax Merchants Rev. Cop 737 Motion to quash the indictment Sustained and appeal by the State.

Points

I. This Court has frequently and recently condemned the practice of the Courts quashing Indictments and has said that parties should be left in the case of question as to the sufficiency of Indictments to their Motion in arrest.

II. The indictment being for a Misdemeanour, the same strictness is not required as in indictments for felony

III The indictment is substantially good and contains all the requisites of a good indictment

IV. The indictment clearly charges that the wares goods and merchandize which the de=
=fendant is alleged to have sold were not the growth produce or manufacture of this State.

V. It was unnecessary to have stated either the name of the party to whom the goods wares and merchandize were sold, or the price paid therefor

VI. The statement of the fact by which the offence is constituted is sufficiently certainly described to insure the defendant subsequent pro=
=tection should he be again questioned on the same ground.

VII. The charge is the sale
the answer is the License
the sale of the black pepper
the allspice and the sugar
is the fact.-
Autrefois convict or acquit
must be shown by Evidence
for the defendant is liable to
an indictment for every day
he sells..

VIII. Judgment of the Court below should be Reversed. & a Clover for State

29

The State of Missouri
appellant
vs
John Miller
Respondent

Points and
Authorities for
State

H A Clover
for State

Filed 19th October 1855
Wm L Glasnell
Cl.

/

State of Mississi } Appeal from the
vs. } Stoddard Cir
John Miller } Circt Court

This is an indictment for dealing as a merchant without license :: ~~It~~ omitting to state the price of the merchandize sold and the person to whom it was sold : The indictment was quashed we suppose for that reason as from the generality of the cause contained in the motion to quash we are left to conjecture as to the precise motive which influenced the action of the Court : We have frequently condemned the practice of quashing indictments prevailing in the circuits, when the motion to quash is substituted for a demurrer. This court will not reverse a judgment of the Circuit Court refusing to quash an indictment as the it is discretionary with the the Court whether it will quash or leave the party to his demurrer, which latter course has atleast the advantage, that it renders unnecessary a bill of exceptions : The point on which this cause seems to have turned in the Court below as above stated was decided by this Court in the case of ~~Ladd &~~ The State vs Ladd 15 Mo. 430. The doctrine in that case has since been repeatedly recognized and acted upon which is, that in an indictment for selling Liquor without license, the name of the person to whom sold & the price are immaterial

The other judges concurring the judgment will be reversed & the cause remanded

William Scott

The State
vs
Jno. Miller

Opinion

Filed 15 May 1857
Wm. S. Glanville
Clk.