Timmerberg, Henry vs. State of Missouri 1856 St. Louis 378/12

587/6

wounding cattle (of McBlish, Robert)
guilty (3 mos. jail, $100 fine)
no bill of exceptions - no error
affirmed

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1.

State of Missouri }
County of St. Louis } ss.

At a term of the Saint Louis Criminal Court begun and held at the City of Saint Louis within and for said County of Saint Louis on the first Monday of September, the same being the third day of said month, in the Year of Our Lord, One thousand eight hundred and fifty five, were present. The Honorable James R. Sackland Judge. Henry A. Clover, Circuit Attorney, Seymour Boullaire who produces here in Court a commission from Sterling Price Governor of the State of Missouri, whereby he is commissioned, Assistant Circuit Attorney of the Saint Louis Criminal Court within and for the County of Saint Louis, with his oath of office endorsed thereon, which is hereby filed, also William H. Timberlake, Marshal and Frederick Kretschmar Clerk of said Court.

The Marshal returns here into Court the venire facias to him directed with a panel of Grand Jurors indorse thereon who being called, come as follows, to wit: Joshua W. Owings who is by the Court appointed foreman, Alton Long Nathaniel Childs, Charles S. Lynch, Joseph C. Brand H. L. Dorsett, Eugene Alcon, William A. Lynch, John W. Crane, C. B. Mowry, Calvin Farris, Edward E. Archer, Thomas H. West, Thomas Dennis, Cornwall Sage, William Musick, and Alexander Kincaid, seventeen good and lawful men, who being duly empanelled sworn and charged, retire to consider of their presentments

Grand Jury }

Wednesday September 12th 1855.

The Grand Jurors return to the bar, and deliver the following indictment as a true bill to wit:

2 No 26. The State of Missouri, versus Henry Timmerburg
Wounding Cattle.

State of Missouri }
Saint Louis County } ss

Saint Louis Criminal Court September Term 1855

Indict. } The Grand Jurors of the State of Missouri within and for the body of County of St. Louis now here in Court duly empannelled sworn and charged upon their oath, present That Henry Timmerburg late of Saint Louis in St. Louis County aforesaid on the third day of August in the year of our Lord one thousand eight hundred and fifty five at Saint Louis in Saint Louis County aforesaid one red unly steer of the value of thirty dollars, one red stag of the value of thirty dollars, One blind black and white spotted steer of the value of thirty dollars, of the goods chattels and cattle of Robert McClish then and there being feloniously unlawfully wilfully and maliciously did wound against the peace and dignity of the State.

Seymour Boullaire Asst Atty

Endorsed. A true Bill. Joshua H. Irvings Foreman
Filed September 12th 1855. F. Kretschmar, Clerk.

Whereupon the following capias was issued to wit:

County of St Louis, ss.

The State of Missouri.

Capias } To the Marshal of St Louis County - Greeting

We command you to take Henry Timmerburg if he be found in your bailiwick, and safely keep so that you have his body before the Honorable Judge of the St. Louis Criminal Court, now in session at the City of St. Louis within and for said County of Saint Louis forthwith 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 Wounding Cattle con-

trary to the form of the Statute in such case made and provided and against the peace and dignity of the State: & have you then there this Writ with your return thereon how you execute the same.

(seal) Witness, Frederick Kretschmar Clerk of our said Court with the seal thereof hereto affixed at office in the City of St. Louis this twelfth day of September in the year of our Lord eighteen hundred and fifty five

Fred Kretschmar, Clerk.

Marshal's Return } Not found in my County.

Wm. H. Timberlake. Marshal

Whereupon the following Capias was issued to wit:

County of St. Louis, ss.

The State of Missouri.

Alias Capias } To the Marshal of St. Louis County — Greeting

We command you as before to take Henry Timmerburg if he be found in your bailiwick and safely keep so that you have his body before the Honorable Judge of the Saint Louis Criminal Court now in session at the City of Saint Louis within and for the County of Saint Louis forthwith 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 wounding Cattle 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 there this Writ with your return thereon how you execte the same.

(seal) Witness Frederick Kretschmar Clerk of our said Court with the seal thereof hereto affixed at office in the City of St. Louis this sixth day of November in the year of our Lord eighteen hundred and fifty five.

Fred Kretschmar, Clerk.

Marshals Return } Executed this writ by having the body of the within named Defendant in open Court St. Louis County Nov. 16th 1855.
W. H. Timberlake. Marshal.

Friday November 16th 1855.-

Bond } Henry Timmerberg as principal and John C. Klee Kamp as his security here in Court each acknowledge themselves to owe the State of Missouri the sum of five hundred dollars, to be levied of their respective goods and chattels lands and tenements, Getup-on condition, that if the said Timmerberg shall personally appear before this Court from day to day during the present term thereof, or on the first day of any future term to which this cause may be continued then and there to answer to an indictment prefered against him for Wounding Cattle, and shall not depart said Court without leave thereof then this recognizance to be void else of full force.-

Friday November 23rd 1855.-

Cont. } The State of Missouri
vs. } Wounding Cattle
Henry Timmerberg } This cause is continued for the State.-

Tuesday January 15th 1856.-

The State of Missouri
vs. } Wounding Cattle.-
Henry Timmerberg } Now at this day come as well the Circuit Attorney, who prosecutes for the State, as the said defendant in his own proper person, and having had hearing of said indictment
Trial } says he is Not Guilty as therein charged and for Trial puts him-
Jury } self upon the Country, and the Circuit Attorney doth the like, thereupon come a Jury, to wit, James Collins, John Bart, Philip Uhrig, Isaiah L. Bailey, Herman Eisenhart, John T. Ma-

=son Clinton Briggs, William Pye, Theodore Orcutt, Peter Ar=
=nold, A. E. Cuney & E. W. Spalding, twelve good and lawful
men, who being duly elected tried and sworn the traverse between
the aforesaid parties well and truly to try, after hearing all of the
Evidence in the cause.—

Court adjourned until nine O'clock tomorrow morning.

The following Instructions were given by the Court, upon the trial
of the above cause to wit.—

Instructions Given.— } If you find that Deft at St Louis County within three years
next before the finding of the indictment did wilfully and malic
=ously wound the cattle of Robert McClisk as charged in the in=
=dictment you should find him guilty and assess his punish
=ment by imprisonment in the penitentiary not less than two nor
more than three years, or in gail not less than six months or by
fine not less than two hundred and fifty dollars, or by both
a fine not less than One hundred dollars and imprisonment in
gail not less than three months.—

A lawful fence is composed of posts and planks must be at
least of the hight of four and a half feet. If the cattle of McClisk
broke through or jumped over a fence as above described
into the inclosure of Deft and did so at three seperate times
then the deft after such third breaking had the right to Kill
such cattle for his on protections and if you find that the
cattle of McClisk were described in the indictment wounded or
Killed by Deft for his protection and not in malice then you
should acquit.—

If you find the fence was not a lawful one above described or
that the wounding was done before the cattle had broken in three
times then the wounding or Killing if done was unlawfully &
if done by cutting with a hoe or by any other instrument or wea=
=pon likely to produce death or great bodily harm then the law
presumes the said wounding or Killing to have been done
in malice and so you ought to find.—

Wednesday January 16th 1856.—

The State of Missouri
vs. | Wounding Cattle.—
Henry Timmerberg | Now again come as well the parties aforesaid as also the Jurors aforesaid who upon their oath aforesaid say they find the defendant Guilty of Wounding Cattle, as charged and assess his punishment at three months imprisonment in the County Jail, and a fine of One hundred dollars,

Verdict

Judgment. } therefore it is considered by the Court, that said defendant for his offence aforesaid and in pursuance of said Verdict be confined in the County Jail for the space of three months that he pay to the State of Missouri for the use of Saint Louis County a fine of One hundred dollars, that he pay the costs of this prosecution, and execution is ordered to issue for said fine and costs thereupon Defendant by his counsel files his motion for a New Trial, thereupon said Timmerberg as principal and John C. Klee Kamp as his security here in Court each acknowledge themselves to owe the State of Missouri the sum of One thousand dollars, to be levied of their respective goods and chattels lands and tenements, Yet upon condition that if the said Timmerberg shall personally appear before this Court from day to day during the present thereof, to receive judgment on the above Verdict and not depart said Court without leave thereof then this recognizance to be void else of full force—

Recognizance

The motion for a New Trial filed as above is in the words and figures as follows to wit:—

The State of Missouri
vs. | Saint Louis Criminal Court.
Henry Timmerberg | January Term, 1856.—

Mo for New Trial } Defendant moves for a New Trial in said cause:— That the verdict is against evidence, That the same is against the law and instructions of the Court, That there was no evidence to convict the defendant, That the Court

7 erred in instructing the jury and declaring the law of case

Kribben, p.d.

Saturday January 26th 1856.-

The State of Missouri
vs. } Wounding Cattle.-
Henry Timmerberg } Now at this day come the parties a-
-foresaid by their Attorney, and the motion for a New Trial filed
Motion Overruled } herein in said cause being by them submitted to the Court, there-
-fore it is considered by the Court that said motion be overruled-

Friday February 15th 1856.

The State of Missouri
Cont.- vs. } Wounding Cattle.-
Henry Timmerberg } This cause is continued by order of Court.-

Saturday February 16th 1856-

The State of Missouri
vs. } Wounding Cattle.-
Henry Timmerberg } Now at this day comes the defendant
Appeal & Recognizance } and prays an appeal to the Supreme Court, and the Court here
being of opinion that, there is probable cause, for said appeal grants
the same, and orders that it operate as a stay of proceedings here-
-in thereupon said Timmerberg as principal, and Antoine
Simons as his security here in Court each acknowledge them-
-selves to owe the State of Missouri the sum of one thousand dol-
-lars, to be levied of their respective goods and chattels, lands &
tenements, Yet upon condition that said Timmerberg shall ap-
-pear in the Supreme Court of this State on the third monday
in March next then and there to receive Judgment on his said
Appeal, and not depart said Court without leave thereof, and ren-
-der himself in Judgment, and obey every order or judgment

8 made by said Supreme Court in the premises then this recog-
-nizance to be void else of full force.—

State of Missouri }
County of St. Louis } ss. I, Frederick Kretschmar, Clerk of the Saint Louis Criminal Court, within and for the County of St. Louis, certify the above to be a true and correct transcript of the record and proceeding had in the above entitled cause, as the same now remains of record and file in my office.—

In testimony whereof, I hereunto set my hand and affix the seal of said Court at office in the City of St. Louis this 4th. day of October A.D. 1856.—

Fr. Kretschmar,
Clerk.

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(16)

March Term 1857

The State of Missouri
res.

vs.

Transcript.

Henry Timmerberg ap.

Appeal from St. Louis Criminal Court.

Filed 7 October 1856
Wm J Glanville Cl.

Transcript $2.65
Ar & seal . 50
$3.15

State of Missouri
Respondent
vs
Henry Timmerberg
Appellant.

Supreme Court
March Term 1857

Respondent's Brief.

No bill of exceptions appears in the record, and no points were saved on the trial in the Court below for the review of this Court.

Judgment ought to be affirmed.

Charles L. Mauro
for Respdt.

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State of Missouri
Respondent
vs
Henry Zimmerley
Appellant

Respondent's Brief.
Charles G. Burns
for Respdt.

Filed 7th April 1857
Wm. Sylvanus
Clk

State vs. Timmerberg

The defendant was indicted in the Criminal Court of Saint Louis, for feloniously, unlawfully, wilfully and maliciously wounding cattle, the property of Robert McCleish.

He appeared to the indictment and plead not guilty, was tried and convicted of the offence; and sentenced to three months imprisonment in the County jail, and to pay a fine of one hundred dollars.

He moved for a new trial; his motion was overruled, and he brings the case here.

In examining the record we find no Bill of Exceptions saving any point in the ruling of the Criminal Court. No evidence preserved on which the motion for new trial was made; nor any other ruling of the Court saved by exceptions.

No counsel appears here by appellant; nor is there any brief filed on his behalf. Nevertheless we have examined the record of the proceedings, and we find no error committed by the Court

and we consider the indictment sufficient to sustain the judgment of conviction —

The judgment must therefore be affirmed the other judges concurring —

John F. Ryland

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State
vs
Timmerberg

Opinion

Ryland

Filed 30 May 1857
[illegible] Glanville
Ch

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