75/11

Oct. 1848 #24

State of Missouri
Vs
James R. Lackland
St. Louis Co.

} Practicing without a license

Lackland was practicing law without paying the taxes on his law license

State of Mo Plaintiff in Error
vs
J R Lackland Deft " "
} Supreme Court Oct Term 1848

The defendant was indicted at the May Term of the St Louis Criminal Court for practicing law without having a license therefor as required by the act entitled "an act to sustain the Credit of the State approved 16 Feby 1848

The Indictment alleges "that the defendant in the County of Saint Louis on the first day ~~of September 1848~~ & on divers other days & times between that day & the day of the taking of this inquisition he the said Deft being then & there & on the ~~the~~ said other days & times a lawyer following the profession of the for a livelihood, unlawfully did act as a lawyer as aforesaid then & there on said other days & times follow the practice of the law as a business & for a livelihood in this to wit." That said deft impart legal council make defend & argue motions prosecute argue ~~cases~~ manage law suits &c without having a license therefor &c

The defendant filed his motion to quash for the reason that the allegation is too general the allegation being that the Deft practices law as a business & for a livelihood

Which motion the Court sustained and the defendant seeks to have the judgment of the Court in sustaining said motion reversed upon the grounds of error.

The Court did not err in sustaining the motion. The allegation is too general which is "that the deft did follow the profession

tice of the law as a business for a livelihood"
The allegation is not sufficiently definite. ~~The~~
vide Austin vs State 10 Mo 591 and Realis
vs State 10 Mo 499

The matter of practicing law as a business
and for a livelihood as alleged in the indict-
ment is a question or conclusion of law which makes the
indictment bad The indictment should
state facts, and only facts, which if true
would render defft guilty. The indictment
should allege that defft ~~was~~ practiced law and
received pay therefor. and the amount of such
pay and from whom it was received must be to
the Grand Jurors unknown.

~~J R Lackland~~

It is true the indictment in general terms alleges that defft prac
ticed law as a business and for a livelihood and goes on
to specify in what that practice consisted that is, he
made, argued, & defend, motions prosecuted & defended
suits in law & chancery &c But the indictment does not
allege that Defft did any of the things specified as a
business & for a livelihood. Nor does it allege that he
received pay for any of the things specified. nor the
amount of that pay For these reasons Defft in error
believes the indictment bad & therefore the Court did not
err in sustaining the motion to quash

J R Lackland

State of Ohio

vs

J R Lackland

Defts Brief.

State
vs
Lackland

This was an indictment against Lackland for practising law without license. The indictment was quashed and the cause brought here by the State.

Livingston Atty Gen for State.

The indictment is in the words of the Statute, and is even more than necessarily full in its allegations. It is not necessary to specify the particular case in which defendant violated the law. It is sufficient to state acts which constitute a violation without alleging for whom such acts were done.

State vs Buford, 10 Mo R.

State
v.
Lackland

Brief of
Atty Gen'l

State of Missouri
vs
James R. Backland } Indictment for Practicing Dentistry without License

Indictment quashed at the May Term of St. Louis Criminal Court

To the above named Defendant You are hereby notified, that a writ of Error has been sued out of the Supreme Court, on the part of the State in the above entitled case, returnable to the next term of said Supreme Court

David N. Hall
Circuit Atty,

Executed the within by leaving a True Copy on 5th Oct 1848. & ~~leaving with~~ with the Defendant —

Jno. F. Long Marshal

Fee $8

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Saint Louis Criminal Court in St Louis County in said State, GREETING:

Whereas, In the record and proceedings in a certain cause lately pending in the Saint Louis Criminal Court held at the City of Saint Louis within and for the County of Saint Louis wherein The State of Missouri is plaintiff and James R Lackland defendant on an Indictment for practising law without license

~~in an action of~~ manifest error hath intervened, to the great damage of the said State as by her complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, COMMAND YOU, that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court, so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the third Monday in October 1848 ~~next,~~ so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error, what of right and according to law ought to be done.

Witness, HAMPTON L. BOON, Clerk of our said Supreme Court, at office, in the City of Jefferson, the Second day of October, in the year of our Lord one thousand eight hundred and forty-eight

H. L. Boon.

SEAL OF THE SUPREME COURT OF MISSOURI

Missouri. Sct: At a term of the Saint Louis Criminal Court begun and held at the Court House in the City of Saint Louis, within and for the County of Saint Louis, on the first Monday of May being the first day of said month, and in the year of our Lord one thousand eight hundred and forty eight, Present. The honorable James B Townsend Judge, David N Hall Circuit Attorney, William S McKnight Marshal of the County of Saint Louis, and Richard J Howard Clerk of said Court,

The Marshal returns here into Court the Venire Facias to him directed with a panel of Grand Jurors thereon endorsed who being called appeared as follows, to-wit: George K. Budd (who is by the Court appointed foreman) Archibald E. Orme, Oliver Bennett, John Cole, Thomas R Allen, Peter C. Hovacker, Roubidoux Annan, Louis DuBruil, Patrick M Dillon, Mathias Steitz, Edward Harrington, Joseph A Berry, John F Long, Louis Dozier, John Stump, Benjamin F. Watkins, John B Labeau and Joel F. Lightner, eighteen good and lawful men who being duly empannelled and sworn, except Joel F Lightner (who made solemn affirmation in due form of law) and having received their charge from the Court withdrew to consider of their presentments,

Court adjourned from day to day until Wednesday 17th May 1848

Wednesday 17th May 1848,

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

"State of Missouri }ss
County of Saint Louis } Saint Louis Criminal Court May Term 1848

The Grand Jurors of the State of Missouri within and for the body of the County of Saint Louis now here in Court duly empaneled ~~and~~ sworn and charged upon their oath present that James R Lackland, lat of Saint Louis in the County of Saint Louis aforesaid, with force and arms, at Saint Louis in the County of Saint Louis aforesaid, ~~with force and arms at~~ on the first day of January in the year of our Lord one thousand eight hundred and forty eight, and on divers other days and times between that day and the day of the taking of this inquisition, he the said James R Lackland, being then and there and on said other days and times, a lawyer following the practice of the law for a livelihood unlawfully did is a lawyer as aforesaid then and on said other days and times follow the practice of the law as a business and for a livelihood in this, to-wit: That he the said James R Lackland, did then and on said other days and times, then as a lawyer as aforesaid give and impart legal counsel and advice, make, argue,

and defend motions, institute, commence, defend, prosecute, argue and manage law suits and causes in law and equity, to and for divers persons to the jurors aforesaid unknown, without then and ~~then~~ and on said other days and times, there having any license therefor continuing in force, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State, D. N. Hall Circuit Attorney, Endorsed "A True Bill. John F Long, Foreman"

Capias

County of Saint Louis, ss, The State of Missouri, To the Marshal of the County of St Louis, Greeting, We command you to take James R Lackland, 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 now in session at the City of Saint Louis, within and for the County of Saint Louis forthwith to answer to an indictment found against him by the Grand Inquest of the State of Missouri for the body of the County of Saint Louis, for practising Law 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 there this Writ with your return thereon how you execute the same

(SS) Witness R. I. Horrard, Clerk of our said Court with the seal thereof hereto affixed at office in the City of St Louis, this 17th day of May, in the year of our Lord eighteen hundred and forty eight, R. I. Horrard, Clerk

Endorsed, "Executed this writ in St Louis County on the 19th day of May 1848 and have James R Lackland in open court Wm. J. M'Knight Marshal, By D. I. M'Colloogh Deputy.

Court adjourned from day to day until Friday 19th May 1848.

Friday 19th May 1848.

James R Lackland as principal and William J Rohmyn as his security acknowledge themselves to owe the State of Missouri the sum of one hundred dollars to be levied of their goods and chattels lands and tenements, yet upon condition that if the said Lackland shall personally appear before this Court on Thursday the 25th day of the present month and from day to day thereafter during the present term thereof and on the first day of any future term to which this cause shall be continued to answer to an indictment preferred against him for practising law without License and shall not depart the Court without leave thereof, then this recognizance to be

void else of full force,

Thursday 30th May 1848.

The State of Missouri } On Indictment for practising law without license
vs
James R Lackland } This cause is continued on the part of the State.

Monday 10th July 1848.

The State of Missouri } On Indictment for practising law without License,
vs
James R Lackland } Motion to quash indictment filed,

Motion

Now at this day day comes the defendant and moves the Court to quash the indictment in this case because the same is insufficient ~~and bad~~ in law
Jas R Lackland,

Thursday 13th July 1848.

Now at this day come the parties aforesaid by their Attorneys and thereupon the motion of the said Defendant to quash the said Indictment being argued by counsel and submitted to the Court, and being by the Court here fully understood it is considered by the Court that said motion be sustained,

Saturday 5th August 1848,

Bill of exceptions filed by Circuit attorney,

Bill of Exceptions

State of Missouri } Indictment in the Saint Louis Criminal Court for practising
vs
James R Lackland } Law without License,

Be it remembered that on the tenth day of July in the year of our Lord one thousand eight hundred and forty eight a motion was filed by said defendant to quash the said indictment (see motion above) which said motion on the thirteenth day of July of the year last aforesaid come up for hearing before the said Criminal Court and said motion was then and there by said Court sustained and the said Court was then and there by the said Court quashed, to the sustaining of, ~~which~~ said motion and the quashing of said Indictment. David N Hall the Circuit Attorney who prosecutes for ~~the State~~ and in behalf of the State of Missouri, then and there and at the time excepted, And now he prays that this his bill of exceptions for and on behalf of the said State of Missouri may be signed and made a part of the record in this cause, which is done, Jas B. Townsend, Judge of St Louis, Cl, Ct,

State of Missouri }
County of Saint Louis } ss. I, Richard Howard, Clerk of the Saint Louis Criminal court in and for the County of Saint Louis aforesaid, certify that the foregoing is a full and complete transcript of the record and proceedings

in the above entitled cause,

In testimony whereof I hereto set my hand and affix the seal of said Court at office in the City of Saint Louis this twenty eighth day of August in the year of our Lord one thousand eight hundred and forty eight,

R. I. Howard, Clk.

33

24.

State

vs

James R. Lackland

Sup Court

Transcript ... $1,40
Cer & seal ... 50
1,90

Filed Sept 14. 1848
H. S. Boon Clk

Ex

State of Missouri

vs

James R Lackland

Error from the Criminal Court of St Louis County.

This Case comes within the principle decided at this term in the case of the State of Missouri against L.L. Simmonds, the judgment of the criminal Court will be reversed and the Cause remanded for trial in that Court.

State

vs

Lockland.

Opinion

Filed January 10. 1849
A. L. Bowman Clk