State v Henderson, John
Powers, Joseph 1852

13th Cir.
Newton Co

184/7

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THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Eleventh Judicial Circuit _____ in said State, GREETING:

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Newton County, in the Judicial Circuit aforesaid _____ wherein The State of Missouri was plaintiff and John Henderson and Joseph Power were defendants _____

_____

_____

in an action of _____ manifest error hath intervened, to the great damage of the said plaintiff 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 second Monday in January 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, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court, at office, in the City of Jefferson, the tenth _____ day of December in the year of our Lord one thousand eight hundred and fifty one

Wm E Dunscomb

SEAL OF THE SUPREME COURT OF MISSOURI

Be it remembered that at a circuit court continued and held at the Court House in the County of Newton in the State of Missouri on the 3rd day of May in the Year of our Lord One thousand Eight hundred and fifty among other proceedings, the following were had to wit,

Now at this day comes the Grand Jury empannelled on the first day of this term and through their foreman present the following as true bills

State of Missouri
vs
John Henderson & Joseph Powers } Indictment

Which indictment is in the following words and figures, to wit,

State of Missouri } In the Newton Circuit Court
County of Newton } April Term A D 1850

The grand jurors for the State of Missouri empannelled sworn and charged to inquire within and for the body of the County of Newton upon their oath present. that John Henderson and Joseph Powers late of said County heretofore to wit on the twenty eighth day of October A D 1849 at the County of Newton and State of Missouri with force and arms did then and there unlawfully knowingly and wilfully oppose one Isaac Gibson a constable of Neosho Township Newton County Missouri in his official duties as such to wit in the Execution of a writ of Attachment issued by one Mark A Garrison a Justice of the peace for said County and Township against the property of one James Boyd in favor of one Samuel Mowell

Contrary to the form of the

Statute in such cases made and provided
against the peace and dignity of the State

Jno F Coffee
Cir Attorney

Upon the back of which is the following endorsement
to wit, "This a true bill

William M Boyd foreman of the Grand Jury

Filed on the 3rd day of May AD 1850

T W Dawson clerk
per Jno. L Templeton D.C.

April Term 6th day AD 1850

The State of Missouri
vs
John Henderson and
Joseph Powers
} Indictment for obstructing process

Now at this day comes the Defendants and by leave of the Court enter herein their personal appearance

State of Missouri
vs
John Henderson and
Joseph Powers
} Indictment for obstructing process

Now at this day comes the defendents by their attorney and by leave of the Court files herein their motion to quash the Indictment

State of Missouri
vs
John Henderson
Joseph Powers &
William Boyd
} Recognizance for appearance

Know all men by these

presents that we John Henderson and Joseph Powers as principal and William Boyer as security. Acknowledge ourselves to owe and stand justly indebted to the State of Missouri in the sum of Three Hundred Dollars to be levied of respective goods Chattels Lands & tenements. The condition of the above obligation is such that whereas the aboveboumed John Henderson & Joseph Powers stand indicted in this Court for wilfully opposing an officer in the execution of process, now if the said John Henderson & Joseph Powers who stand Indicted as aforesaid shall make their personal appearance at the next term of said Court on the first monday after the fourth monday in October AD 1850. to be holden within & for the County of Newton in the State aforesaid at the Courthouse in the Town of Neosho, and not depart said Court without leave, then this obligation shall be void otherwise to remain in full force and effect &c

November Term Newton Circuit Court 1st day AD 1850

State of Missouri
vs
John Henderson & Joseph Powers
} Indictment for wilfully opposing process

Now at this day comes the Defendants under recognisance by their attorney the Circuit attorny also being present the defendants take up their motion heretofore filed to quash said Indictment. Whereupon

the court after hearing the arguments of said counsels orders that said motion be sustained to which opinion of the Court the Circuit Attorney excepted &c

State of Missouri against John Henderson & Joseph Powers } On an Indictment &c (In the Newton Circuit Court November term AD 1850)

for obstructing officer in the execution of civil process &c

Be it remembered that on this fifth day of November in the Year of our Lord One thousand Eight hundred And fifty this cause came on to be heard whereupon the Defendants filed their motion to quash said Indictment for the following reasons to wit, first because no offence is charged in said indictment with that certainty that is required by law second the Indictment on its face is defective and insufficient, which motion of said defendants the court sustained and quashed said Indictment to which opinion of the Court in sustaining said motion of said defendants and quashing said Indictment the State by her Circuit Attorney Jno T. Coffee excepts and prays that this her bill of exceptions may be signed sealed and made a part of the record in this case which is accordingly done

C. S. Yancey Ct Judge (seal)

I Jno D Templeton Clerk of the court aforesaid do hereby certify that the foregoing is a true and correct copy of all the entries now of Record in relation to the foregoing entitled cause

In Testimony whereof I have hereunto set my hand and affixed my private seal (there being no seal of said Court Yet provided) done at my office on this the 26th day of February A D 1851

Jno. D. Templeton Clk

first. Indictment returned
Second. Defendants appearance, filing motion
third. Recognisance for further appearance
fourth. Judgment of court on Defts motion
Bill of exceptions &c
fifth Certificate & seal

54. ~~82~~ ~~83~~

The State of Mo. p.e.

vs } Error

Jno. Henderson & Jos. Powers d.e.

filed March 13 1851.

Wm E Duncomb

Clerk

~~[illegible]~~

~~[illegible]~~

Newton

13th

State vs Henderson & Powers -

The defendants John Henderson and Joseph Powers were indicted at the April Term 1850 of the Circuit Court for the County of Newton, for opposing the execution of Civil process -

The defendants entered their appearance ~~and filed~~ to the indictment, and moved the Court to quash it - This motion the Court sustained and the State by the Circuit Attorney excepted, files his Bill of Exceptions and brings the case here by writ of Error.

The sufficiency of the indictment is the only point before us - This indictment, alleges, "that John Henderson and Joseph Powers late of said County here before the Court on the 28th day of October A.D. 1849 at the County of Newton and State of Mississippi, with force and arms did then and there unlawfully knowingly and wilfully oppose one Isaac Gibson a Constable of Neosho Township Newton County, Mississippi in his official duties as such Constable in the execution of a writ of Attachment issued by one Mark A Garrison a Justice of the peace in said County and Township against the property of one James Boyd in favor of one Samuel Worrell." Contrary &c

This indictment is framed under the 18 Sec. V Art. of Act Concerning Crimes and Punishments, Digest 1845: Which declares "If any person or persons shall knowingly and wilfully obstruct, resist or oppose any Sher-

iff, or any other ministerial officer in the service or execution, or in the attempt to serve or execute any writ, warrant, or process, original or judicial, or in the discharge of any other duty in any case civil or criminal, other than felony, or in the service or attempt to serve any order or rule of Court in any case, every person so offending shall on conviction be adjudged guilty of a misdemeanor and be punished &c.

The objections urged below to the indictment, are that no offence is charged with that certainty that is required by law. And that the indictment on its face is defective and insufficient.

We think the objections are well taken, and that the Court improperly sustained the motion to quash.

The indictment should have recited the writ, of which the defendants are charged to have opposed the execution, in order that the Court might see that it was such a writ as the Constable had by law a right to execute.

The indictment is much too general; it should have specified with more particularity, the writ. The offence consists in opposing the execution of process authorized by law; it becomes necessary then in all such cases so to state or recite the process, that the Court may see, that the officer opposed or obstructed had the legal authority to execute the process in question. The other judges concurring the judgment below is affirmed

John D. Ryland

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State vs Henderson & Powers

Opinion of the Court
by Ryland Judge

filed February 10 1852

Wm E Duncan
Clerk

Gardenhire, Attorney General, for the State

The question in this case is as to the sufficiency of the indictment. It is framed on the 18th Sec. of the 5th Article of the act concerning crimes and and punishments. R. S. 381. To constitute an offence under this section, three things are essential; 1st a knowing and wilful opposition to a ministerial officer, 2d in the execution of process, and 3d in a civil or criminal case. The indictment charges a knowing and wilful opposition to the constable of a particular township, while in the execution of a particular process, and the name of the Justice who issued it, and of the plaintiff and defendant, and the character of the case, are also set out. What more the indictment ought to contain, I know not; if any thing, for what reason, I know not. It keeps close to the words of the Statute, and, seems to me, to be sufficient? See form of indictment, for assaulting a constable in the execution of his office 3 Chitty C. L. 831, and 2 id 144-5 note (a) in which it is said that it is not necessary to state that the party to be arrested was guilty of any offence, or owed any debt, or that any affidavit of debt was made 3. J. R. 185

The State

Obstructing

vs

process

Henderson & Powers

Brief for the State

Gardenhire