Williams, William vs State 1853 Polk/7th Cir 197/4

14

Bohvar Polk Co Mo.

Dec 1853.

Clerk of the Supreme Court

Dr Sir

please send me two writs of Error. one in the case of State of Missouri against William Williams and one in the case of Leonard G. Heydon against John Toler & oblig yours. I would send the money but cannot pt. I will see them paid

Yours

Wm H. Otter

State } precipe
v Wm Williams

Leonard G Heydon
v } precipe
Duo. Toler

Clerk of Supreme Court
Jefferson city
Mail } Mo

FAID 3

filed Dec 10 1853
Wm E Dunscomb
Clerk

CLIFAR DEC 7 MO.

THE STATE OF MISSOURI, ss.

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

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of Polk County, in the Judicial Circuit aforesaid wherein The State of Missouri was plaintiff and William Williams was defendant

in an action of manifest error hath intervened, to the great damage of the said defendant as by his 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 three

Wm E Dunscomb

State of Missouri } Set
County of Polk }

Be it remembered that at the circuit Court began Continued and held within and for said County of Polk on the 23rd day of April A.D. 1853 The Grand Jury for the State of Missouri empannelled charged and sworn to enquire within and for said County presented and returned into Court a Bill of Indictment against William Williams which is in the words and figures following Toviet

" State of Missouri } In the Polk Circuit Court
County of Polk } April Term A.D. 1853

The Grand Juron for the State of Missouri empannelled charged and sworn to enquire within and for the body of the County of Polk aforesaid upon their oath present that William Williams late of the County of Polk aforsaid on the tenth day of September in the year of our Lord eighteen eighteen hundred and fifty two at the County of Polk aforesaid did then and there take up a Stray toviet One Stray Steer which was not then and there claimed and proved within five days from the day and year aforsaid at the County aforsaid or at any

the County a place and that he the said William Williams did not then and then within five days from the day and year aforesaid at the County aforesaid the same day being the day being the day on which the said William Williams took up said Stray Steer take said Steer then and then before a Justice of the Peace of the County aforesaid or a Justice of the Peace of any other County and make oath that said Steer was taken up on his plantation and that the mark and brands had not been since altered to his knowledge but sold the same without then and then having obtained the consent of said Steer So to do Contrary to the form of the Statute in such case made and provided and against the Peace and dignity of the State

W.H. Emerson Cir atty

A true Bill

J Dunnegan Foreman of the Grand Jury

And afterwards Court at a circuit Court began continued and held within and for said County of Polk at the Court House in Bolivar in said County on the 20th day of October A.D 1853 the following Proceedings among others were had in said Court Viz

State of Missouri
vs
William Williams } Indictment for Violating Stray Law

Now at this day came the Circuit Attorney who prosecutes for the State of Missouri in this behalf as well as the said Defendant in his own proper person and being forth with demanded of and Concerning the premises, and how he would acquit himself of the same says he is not guilty in manner and form as in said Indictment he is charged and for his trial puts himself upon the Country and the Circuit Attorney doth the like and thereupon came a jury Towit David Wright William Morrow David D. Stockton James R. Fullerton William Coon John M. McClaskied Moses P. Hart Thomas Hale & Jonathan S. Goldsberry nine good and lawful men who being Accepted as a jury in said Cause by the parties who being duly elected tried and Sworn to well and truly try the issue joined in said Cause On their oaths do say we the Jury find the Defendant Guilty in manner and form as in said Indictment he is charged. And the Jury having failed to assess the Punishment. The Court doth Assess the Punishment to a fine of Twenty Dollars. It is therefore Considered

by the Court that said Defendant make his Fine with The State of Missouri by the payment of the Sum of Twenty Dollars by the Court in Manner and form aforesaid Assessed And that said Defendant render himself in Execution

And afterwards Court at the Court aforesaid Continued and held on the 21st day of October A D 1853 the following Proceedings Among others were had in said Court Court

State of Missouri
vs
William Williams } Indictment for Violating Stray Laws

Now at this day comes the said Defendant by his Attorney and files herein his Motion to arrest the Judgement in this Cause

And afterwards Court at the Court aforesaid Continued and held On the 22nd day of October AD 1853 the following Proceedings Among others were had in said Court Court

State of Missouri }
vs } Indictment for Violating
William Williams } Stray laws

Now at this day comes again as well the Circuit attorney who prosecutes for the State in this behalf as the said Defendant by his attorney and the Motion in arrest of Judgement filed in this Cause on Yesterday coming on to be heard and being fully heard and understood was by the Court Overruled to which opinion and Judgement of the Court in Overruling said Motion the said Defendant excepts and tenders his Bill of Exceptions, which is Signed and Sealed and Ordered to be filed and enrolled as forming apart of the Record in said Cause and the same was accordingly done

And which said Bill of Exception, so filed as aforesaid by said Defendant is in the words and figures following Towit

State of Missouri }
vs }
William Williams }

Be it remembered

that at the October Term 1853 of the Polk Circuit Court Deft filed his Motion in arrest of Judgement which Motion the Court Overruled Deft

William Williams }
ads }
State of Mo. }

The deft moves the Court to arrest the Judgement in this cause

Because the Indictment is insufficient

Because it is not sufficiently certain as to Sale of the Steer Mention-ed in the Indictment & for other causes

Otterbury for Deft

To which Defendant excepted. To all which Defendant Excepted and prays that this his Bill of Exceptions may be Signed Sealed and enrolled which is accordingly done

Waldo P Johnson [illegible]
Cir Judge

State of Missouri } Set
County of Polk }

I Thomas Routtree clerk of the Circuit Court within and for said County do Certify that the foregoing is a full true and Complete Transcript of the Record and proceedings had in said Court in the case of The State of Missouri against William Williams as the same now remains on Record in my said Office made out in obedience to the annexed writ of error Witness my hand as Clerk as aforesaid with the Seal of said Court affixed at Office in Bolivar this 11th day of December A.D. 1853

Thos Routtree clerk
By J. W. Davis D.C

State of Missouri
vs
Transcript

William Williams h. E.

filed Dec. 29 1853
Wm E Duncan
Clerk

Polk
7a

Mr. Burr H Emerson Circuit attorney

Take notice that a writ of error has been issued in the case of the State of Missouri against William Williams lately pending in the Polk Circuit Court which will be tried at the next Term of the Supreme Court to be held in Jefferson City on the 2 monday of January 1854.

Atty for deft

State of Missouri } I Isham B Hastain D Shff
County of Hickory } return the within notice by
reading it to Burr H Emerson the 23 day
of December 1853 I B Hastain D Shff

Shff fees $050

33

State
Vs
Wm Williams

Notice of Unit

filed Jany 7 1854
Wm C Dougherty
Clerk

State vs Williams

At the April Term of the Circuit Court within and for the County of Polk in the year of Our Lord Eighteen hundred and fifty three, the defendant William Williams was indicted by the Grand Jury—

The indictment charges that the defendant, on &c. at &c. did then and there take up a stray, to wit, One stray steer, which was not then and there claimed and proved within five days from the day of taking up the same; and that said defendant did not within five days from the day of taking up said stray, take the said steer before a justice of the peace &c. and make oath that said steer was taken up on his plantation and that the marks and brands had not been since altered to his knowledge, but sold the same, contrary &c—

The defendant was tried on this indictment, and found guilty, and fined twenty dollars— He moved in arrest of judgment, alleging the insufficiency of the indictment; this motion being overruled, he excepted and sues out his writ of Error and brings the Case to this Court—

The indictment in this case is framed on the 4th Sec. of the Act concerning "Strays" Digest 1845 page 1039, which is in these words "If any person take up any stray of

any kind and it be not claimed and proved, he shall within five days, take it before a justice of the peace of the County, and make oath, that it was taken up, on his plantation, and that the marks and brands, have not been since altered, to his knowledge"—

This 4th Section of the Act concerning Strays in the Digest of 1845 was changed by the Act of 1849 amendatory of the Stray law of 1845. This last act that is the act of 1849 is as follows— Sec. 1— That so much of the fourth section of the Act concerning Strays of 1845, as requiring the taker up, to take estrays before a justice of the peace, shall not be so construed as to compel the taker up, to take any hogs, cattle, sheep, goat or other unbroke animal before a justice of the peace. Sec. 2— But the taker up may get two disinterested householders, to view and appraise the stray, or strays, who shall go before some justice of the peace and take an oath as required by the 5th section of the Act of 1845— The 3. Sec. repeals all conflicting acts or parts of Acts—

The stray mentioned in this indictment is a steer— it is such an animal as is included in this amendatory act— A steer is not necessarily ~~an animal that is to work~~

such an animal as the taken up is not required take before a justice of the peace — The indictment then charges the defendant with the omission to do an act which is not required by law to be done; the failure therefore is no offence —

In the opinion of this Court the sale of a stray, to be punishable under the 29th Section of the Act of 1845 must be alleged to be, before the ~~title~~ was vested in the taken up —

The indictment therefore in this case shews no offence; it will not support the conviction; the judgment below ought to have been arrested —

The judgment of the Circuit Court, is with the concurrence of the other judges reversed —

John F Ryland

33

State vs Williams

Opinion

Ryland C

filed Jan. 25 1854

Wm E Drumond

Clerk

The State of Missouri } In the Supreme Court
against } from the Polk Circuit
William Williams } Court on writ of Error

The defendant comes and says the Circuit Court manifestly erred in this, The Circuit Court in not arresting the judgment. (the indictment being defective not being sufficiently certain in stating the name of the person to whom the stray was sold.

For this ~~error~~ error the judgment of the Circuit Court ought to be ~~set aside~~ reversed.

Atty Atty for defdt

State of Missouri
against
William Williams

In the Supreme Court from the Polk Circuit Court on writ of error.

This was an Indt. against the deft for selling stray without having first complied with the statute in taking up strays, the defendant was found guilty at the October Term 1865 of the Polk Circuit Court, he filed his motion in arrest (see Bill of Exceptions), Because the Indt. was Bad in not stating to whom the deft sold the stray, the Court overruled the motion & deft excepted,

The deft relies on this point That the Indt is not sufficiently Certain that it ought to have ~~stated~~ been stated to whom the Sale was made If it is necessary to state in an Indt for selling spirituous liquors to whom the liquor was sold the prin. ~~Great~~, in order to apprise & notify the deft of the charge against him so that he may come with evidence ~~[illegible]~~ to meet the charge with the same propriety should the deft in this cause have been notified &c. It is unnecessary to refer to authority upon so plain a proposition Other atty for deft that the Indt should state all the ~~[illegible]~~ offence with Certainty

State

of

Missouri

brief of plffs in

error

Gardenhire, Attorney General, for the State

The indictment is sufficient. Rev. Stat. 1039, Sect. 4; 1041, Sect. 30; 413, Sect. 31.

The State

vs.

Evan to Polk

William Williams

States' Brief

In the Supreme Court
January Term 1854.

William Williams – Defendant –
ads } Error to Polk Circuit Court –
State of Missouri – Plaintiff –

At the April Term of the Polk Circuit Court 1853, the defendant was indicted upon the 30th sec of an act entitled an act "concerning strays," Revised Code of 1845 page 1041.

The indictment charges, "That the defendant at the County of Polk, &c, took up a stray steer, which was not claimed and proved within five days from the day of taking up the same – and that defendant did not within five days take said steer before a justice of said County or before a Justice of the peace of any other County, And make oath that said steer was taken up on his plantation, and that the marks and brands had not been altered to his knowledge; But that said defendant sold the same without there having obtained the consent of "said steer" so to do; Contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the State, &c,"

The defendant appeared and plead not guilty to the indictment: And he was tried by a jury, and a verdict of Guilty found against him.

And thereupon the defendant by his counsel, moved in arrest of judgment - assigning the following reasons therefor, to wit: =

1st Because the indictment is insufficient

2nd Because it is not sufficiently certain as to the sale of the steer mentioned in the indictment, and for other causes -

Which motion was overruled by the Court. To which ruling the defendant, by his counsel excepts

And thereupon, ~~upon~~ the jury having failed to assess the punishment, the Court assessed the same at twenty dollars, and rendered judgment thereon for the same.

And the defendant has brought this cause into this Court by writ of Error.

The plaintiff in Error by his Counsel will rely upon the following points and authorities to reverse the decision of the Circuit Court

1st. The indictment is bad, in this, that it does not show that the defendant was guilty of any offence punishable by law; For that it charges the defendant with having taken up a stray steer, and having failed as such taker up to comply with the requisitions of the 4th sec of an act, entitled, an act concerning strays See Revised Code 1845 page 1039 - Which said section of said Statute was repealed by ~~the XXXX section~~ an act, amendatory of said act concerning Strays, passed on the 2nd day of January 1847. See acts of 1847, page 139.

2nd The indictment is bad for duplicity, as it charges if any crime be charged
the defendant in the same count with having committed
two distinct offences, punishable differently.
People vs Wright, 9th Wendell, Rep. 193. Common-
-wealth vs. Symonds 2nd Mass, Rep. 163. The State vs.
W. Nelson, 8th New Hampshire, Rep. 163.
Storrs vs. The State, 3d Mo Rep. 7.

3d The indictment does not aver that the steer is of any
value, or that it was sold by the defendant before the legal
title had vested in him. See 29th sec of the act concerning nor to whom, when or where sold
Strays, Revised Code, page 1041. State vs Wimberly 3d Mc
Cord 190.

4th The offence for which the defendant is indicted was
created by statute, and the indictment should strictly pursue the
language of the act creating the offence. See 6. S & R. page 5.
State of Alabama vs. Brown 4th Porters Rep, page 410.
The State vs. George Foster. 3d Mc Cord's Rep, page 442.

5th Even if the indictment contained all the necessary
averments in the language of the 29th sec of the above
act, the court erred in assessing a different punishment
against the defendant, than the one authorized by said
section of said act.

Emmet R. Hayden,
atty for Deft

6th The indictment is bad, because there is no endorse-
-ment of the name of a prosecutor upon it; or any
statement of the facts at the end of the indictment,
signed by the foreman of the grand jury, as is required
by Statute. See Revised Code 1845, article 3d, title
Practice & proceedings in Criminal cases, section
22, page 866. 6 Mo Rep. 648-52, The State
vs Mc Courtney et alios.

William Williams pltf
in Error
as Error to Talk
Circuit Ct
The State of Missouri
Dept in Error

E.R. Hayden's Brief for
~~Deft~~ Appellee Pltf
in Error.