Crabtree, Pink vs. State of MO; 1858 Laclede Co. #7 Cir. 22d/9

77/33

- Keeping open a dramshop on Sunday and a grocery
- Reversed
- def's instructions should have been allowed so jurors could determine intent as well as actions

1st

September the 28th 1857

Be it remembered that at a Circuit Court of the Seventh Judicial Circuit in the State of Missouri began and held at the Court house in the Town of Lebanon within and for Laclede County in the State of Missouri on Monday the 28th day of September AD 1857. Present

Hon. Dewitt C. Ballou Judge.
John L. Herndon Clerk
and John R. Casey Sheriff

When and where among others were the following proceedings to wit.
"Now at this time comes John R Casey Sheriff of Laclede County in the State of Missouri and returned here into Court a venerie to him directed with the following Jurors endorsed thereon to wit M. J. Huffman J. B. Fitzgerald D. H. Thomas Josephus McCoy Matt H Hooker Moses Norman summoned for Hooker Township. Jeofry Parmer Lewis Bohannon John R. Hays George H. Stith William James William McGinnis and Reubin Broils for Osage Township James Boggs J. D. Bridges James Cummins John F Fight and Joel M. Huffman for Gasconade Township William H Smith James Stone Edwin Wilson John R. Craddock A. B. Wair and Wm N Frank for Smith Township Daniel Chambers Robert Walker W M Roper Wm Russell John Dennis & J L Rimmer for Union Thomas Hampton A. S. Cherry Alfred Smithpeters James M. Powers Joseph Thrailkill Abner Adkins

Michael Miser Ansley Paul John Martin and William Saunders for Lebanon Township, good and lawful men summoned from said aforenamed Townships in Laclede County in the State of Missouri from which list of Jurors the following persons were selected by ballot as grand jurors for the State of Missouri to enquire within and for the body of Laclede Viz. for Lebanon Township William Saunders James M. Powers Abner Atkins & A. S. Cherry "who is by the Court appointed foreman" Gasconade Township Joel M. Huffman James Boggs, Hooker Township Matt H. Hooker J. B. Fitzgerald Osage Township Wm McGinnis Jeffrey Parmer & Reubin Brooks Smith Township Edwin Nelson Wm N. Franks Union Township. J. L. Kinner N M Roper, Wm H Russel sixteen good and lawful men who being empannelled charged and sworn to enquire within and for the body of said County of Laclede retired to consider of their presentments and indictments

State of Missouri
vs
Pink Crabtree

Be it remembered that on the 2nd day of October AD 1857 at our Circuit Court held at the place aforesaid the Grand Jury aforesaid empannelled charged and sworn as aforesaid

amongst other indictments returned into Court by their foreman an Indictment against Peter Crabtree, for keeping open Drumshop on Sunday whereupon the Court after making an entry of said Indictment made the following order to wit "Which an ordered to be filed and Capias Writs issued in each Case and nothing no further bussiness were by the Court discharged

Which said Indictment against Peter Crabtree is in the words and figures as follows to wit.

State of Missouri } } In the Circuit Court of Lacleede
County of Lacleede } ss } County Sept Term AD 1857

The Grand jurors for the State of Missouri summoned from the body of Lacleede County empannelled charged and sworn to enquire within and for the body of Lacleede aforesaid upon their Oath present.
That Peter Crabtree late of the County of Lacleede and State aforesaid on the 27th day of September AD 1857 the same being the first day of the week commonly called Sunday at the County of Lacleede aforesaid did then and there unlawfully keep open a drumshop by him & then and there permitting persons to enter said drumshop and then and there to drink distilled liquor against the peace and dignity of the State And

the jurors aforesaid upon their oath aforesaid do further present that Pink Crabtree late of the County of Laclede and State of Missouri on the 6th day of September AD 1857 the sabbath day the first day of the week commonly called Sunday at the County of Laclede aforesaid did then and there unlawfully keep open a Grocery by then and there permitting persons to enter said Grocery & then and there to drink intoxicating liquors against the peace & dignity of the State

A true Bill — J W Freeman Cir. Atty

A S. Cherry Foreman of the Grand jury

and on the 2nd day of October AD 1857 a writ of Capias was issued on said Indictment against said Pink Crabtree which said writ was in the words following to wit

The State of Missouri

To the Sheriff of Laclede County Greeting; you are hereby commanded to take the body of Pink Crabtree if he be found in your County and him safely keep so that you have his body before the Hon Judge of our Laclede Circuit Court at the Court house in the Town of Lebanon on the first day of the next

2nd

Term of said Court which will be held on the second Monday after the second Monday in March next then and there to answer unto the State of Missouri for an Indictment against him by the Grand jury of the State of Missouri empannelled charged and sworn to enquire in and for the body of the County of Laclede for unlawfully. for keeping open drumshop on Sunday. Contrary to the Statute in such cases made and provided and against the peace and dignity of the State.

In testimony whereof I John L Henderson Clerk of our said Circuit Court have

L.S. hereunto set my hand and affixed the seal of said Court done at office in the Town of Lebanon this 2nd day of October AD 1857

John L. Henderson Clerk

and afterwards to wit on the 24th day of October AD. 1857 John R Casey then being Sheriff within and for Laclede County returned said Writ in the Clerks office of said Court with the following endorsement thereon to wit. "Served the within Capias by apprehending the within named Peter Crabtree and liberating him by taken bond W L Jarrell as security all done in Laclede County Mo this October 3 day 1857 Fees $1.00 John R Casey Sheriff

and which said recognizance is in the words and figures following to wit.

Know all men by these presents that I L P Crabtree as principal W. G. Farris as security acknowledge ourselves to owe and stand justly indebted to the State of Missouri jointly and severally in the sum of One hundred dollars to be levied of our respective goods and chattels lands and tenements to be ~~void~~ nevertheless on this Condition that if L. P. Crabtree shall make his personal appearance before the Hon Laclede Circuit Court at the Court house in the Town of Lebanon on the 1 day first day of the next term thereof which said term will be begun and held in and for said County of Laclede on the second Monday after the second Monday in March 1858 to answer to the State of Missouri on an indictment preferred against him for keeping open a dramshop on Sunday and not depart the Court without leave of Court given under our hands seals this 3 day of October 1857

L. P. Crabtree

W G Farris

On this 3 day of October 1857 personally appeared the above named parties before me and acknowledged the above bond to be their act and deed for the purposes therein named this 3 day of October 1857. John H. Casey Sheriff

And at a Term of our said Circuit Court began and held within and for said County at the Court house in the Town of Lebanon on Monday the 22nd day of March 1858 among others were had the following proceedings in said Case. on the 2nd day of said Term thereof. and which are in the following words & figures to wit.

The State of Missouri
vs
Pink Crabtree
} Indct for Keeping open Dramshop on Sunday.

Now at this day Comes into Court the deft by atty and asks leave of the Court to file a motion to quash the indictment which is by the Court granted, and after hearing the argument of Counsel said motion is by the Court overruled-

And which motion is in the following words and figures as follows to wit-

The State of Missouri
against
Pink Crabtree
} Indct in the Laclede Circuit Court

The deft Comes and moves the Court to quash the indictment. Because it is not stated in sd Indictment that the liquor was not wanted for medical purposes Because no indictable offence is charged & for other Causes

Pink Crabtree

And upon the 3rd day of said term further proceedings were had in relation to said cause which are in the following words and figures to wit

State of Missouri
vs
Pink Crabtree } Indict for keeping open Dram-shop on Sunday.

Now at this day comes into Court the Circuit attorney who prosecutes for the State of Missouri in this behalf as well as the defendant in his own proper person who for plea says he is not guilty in manner and form as he stands charged in the indictment and thereupon throws himself upon the country and the Circuit atty doth the like and thereupon came a jury to wit Alfred Hamilton S.W. Barnes George Russell A. Everett Thomas Craig H.M. Turner James Rippy Wm L. Thrailkill S.B. Noland A Ivey J.C. Laine and Rufus Phillips twelve good and lawful men who after being sworn to well and truly try the issues joined heard the evidence and argument of counsel returned into Court the follow virdict to wit We the jury find the defendant guilty in manner and form as he stands charged in the indictment and assess his fine at the sum of five dollars

S W Barnes foreman It is therefore considered by the Court that the plaintiff have and recover of the deft the sum of five dollars as well as costs herein laid out and expended and the deft is ordered into the custody of the sheriff till fine and costs are paid

and afterwards to wit on the day and year last aforesaid the following proceedings were had in words and figures as follows to wit.

The State of Missouri
vs
Pink Crabtree } Indct for keeping open Drainshop on Sunday.

This day comes into Court the deft by his attorney and asks leave of the Court to file herein his motion to set aside the verdict of the Jury which is by the Court granted and said motion filed

and which said motion is in the words and figures as follows to wit.

The State of Missouri
vs
Pink Crabtree } In the Circuit Court of Lacle-de County.

The sd deft comes and moves the Court to set aside the verdict of the Jury in this cause

and grant a new trial. Because the Court erred in refusing proper and legal evidence offered by defendant and Because the Court erred in permitting improper evidence to go to the jury, and Because the Court erred in giving improper & illegal instructions to the jury for the State and Because the Court refus-ed proper and legal instructions to go to the jury asked by the deft. Because the verdict is agai-nst law and evidence & for other Causes

Pink Crabtree

and afterwards to wit on the 25th day of March 1858 at our Court aforesaid further proceedings were had in relation to said Cause which are in words & figures as follows to wit.

State of Missouri
vs
Pink Crabtree
} Indict for keeping open dramshop on Sunday.

Now at this day comes into Court the deft by his atty and the motion for a new trial coming on to be heard, is overruled by the Court hereto-

and afterwards to wit on the the 26th day of March 1858 at our said Court further proceedings were had in relation to said Cause which are in words & figures as follows to wit-

State of Missouri }
vs } Indict for keeping open dram
Pink Crabtree } shop on Sunday

Now at this day comes into Court the deft by his Attorney and files herein his bill of exceptions.

And afterwards to wit on the day and year last aforesaid further proceedings were had in relation to said cause in said Court which are in words & figures as follows to wit—

State of Missouri }
vs } Indict for keeping open dramshop
Pink Crabtree } on Sunday.

This day comes into Court the defendant as principal and W. G. Jones and G. W. Crabtree as sureties and acknowledge themselves to owe and be justly indebted to the State of Missouri in the sum of One hundred dollars to be levied of our respective goods and chattels lands and tenements to be void if the said Pink Crabtree shall appear in the Circuit Court of Laclede County on the first day of next term of the Circuit Court of said County to be held at the Court house in the Town of Lebanon in said County and at such time and place as the Supreme Court shall direct and that he

will render himself in execution and obey any order and judgement which shall be made in the premises upon his appeal in said cause to the supreme Court or otherwise. And the defendant having prayed an appeal ~~to the~~ in this cause to the supreme Court and entered into the above recognizance. The Court hereby grants him an appeal and orders that no execution issue until the first day of August AD 1858

And which said bill of exceptions filed in said cause on the day and year last aforesaid in our said Court are in words and figures as follows to wit.

State of Missouri } In the Circuit Court of Laclede
against } County
Pink Crabtree }

Be it remembered that on the trial of the above cause at the March Term 1858 of the ~~sd~~ Circuit Court the following was all the evidence in the cause.

James Appling a Witness for the State Swore he and others on a Sunday within twelve months before the finding of the Indictment opened the door of a grocery kept by deft in said County they went in and immediately shut

the door after they entered the grocery that two of them took a drink defendant set out the liquor in the grocery while the deft was present that the deft did not sell the liquor drank that the door of sd Grocery had not been standing open previous to sd persons entering on sd day nor was it permitted to stand open.

This was all the evidence in the cause the State asked the following instructions No 1 & 2

1 If the jury shall believe from the evidence that the defendant at any time within one year before the finding of the indictment and within the County of Lafayette kept open a Grocery on the first day of the week commonly called Sunday they should find the defendant guilty

2 And the Court instructs the Jury that if the defendant was the keeper of a grocery and that he permitted persons to enter it on Sunday and to drink intoxicating liquor in such grocery it was keeping open his Grocery within the meaning of the statute.

to the giving of which the deft objected the Court

overruled the objection and gave the instructions to which deft excepted. The Court gave one instruction for the deft.

Unless the jury are satisfied beyond a reasonable doubt of the guilt of the deft they must acquit him.

The deft asked instructions No 1 2 & 3

1 The opening of the door of a grocery and going in on Sunday and after a person has entered the Grocery giving him a drink of liquor is not such a keeping open of a Grocery door as is contemplated by the Statute and in order to convict the jury must believe from the evidence that the door was opened with a view to evade the law or to allure customers or to carry on his usual business.

2 Altho the jury may believe that the defs opened the grocery door they will find not guilty unless they believe he opened the Grocery door with a view to evade the law or to allure customers or to carry on his usual business

3 The Court instructs the the jury that altho they

may believe from the evidence that Two or 3 persons did enter the Grocery of defendant on Sunday and drink Spirituous liquor in said Grocery in the County afs and within twelve months from the 2nd day of October 1857 that they should not find defendant guilty unless they further believe from the evidence that said drinking was permitted by defendant to alure customer-s or to carry on his ordinary business.

the State objected to giving sd instructions the Court refused to give sd instructions to which ~~def~~ deft excepted the deft filed a motion for a new trial

The State of Missouri against Peak Crabtree } In the Circuit Court of Laclede County

The sd deft comes and moves the Court to set aside the verdict of the Jury in this cause and grant a new trial Because the Court erred in refusing proper & legal evidence offered by defendant and Because the Court erred in permitting improper evidence to go to the Jury and Because the Court erred in giving improper & illegal instructions to the Jury for the State and Because the Court refused proper & legal instructions to go to the Jury

asked by the deft Because the verdict is against law and evidence & for other causes

Pink Crabtree—

The court overrules all motions to which deft excepts and he prays that this his bill of exceptions may be signed sealed and made part of the record which is accordingly done

Dewitt C. Ballou (Seal)
Circuit Judge

State of Missouri }
County of Laclede } set

I John L. Hermann Clerk of the Circuit Court within and for said County of Laclede and State aforesaid do hereby certify that the foregoing is a full true and perfect Copy of the record and proceedings of said Laclede Circuit Court in relation to said Case of the State of Missouri against Pink Crabtree as fully as the same now remaining in my said Office manifestly appears

In testimony whereof I have hereunto set my hand and affixed my seal of Office at Office in Lebanon this 28th day of April AD 1858

John L. Hermann Clerk

30 ~~28~~

State of Missouri
vs
Pink Crabtree appl.

Copᵒ for Printer

filed May 6th 1858

Wm E Dunscomb

Clerk

Laclede

7th

17. to 30

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 Laclede County in the Judicial Circuit aforesaid wherein The State of Missouri was plaintiff and Crattee 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 first Monday in July 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 twenty fourth day of May in the year of our Lord one thousand eight hundred and fifty eight.

Wm E Dunscomb

Please fill blank

WED

W E Dunscomb Esqr

Dr Sir in the case of the State vs Crabtree an appeal was regularly taken at the last term of our Court, and a full and perfect transcript has all ready been certified to your office. If there is any thing more necessary you have but to command and if in my power I will obey

Yours Respectfully
J L Hendon clerk

State v. Pink Crabtree

This indictment was for a breach of the 36th sec. of the 8th art. of the Act concerning Crimes & Punishments. That section ~~declares~~ prohibits under a penalty "exposing to sale any goods, wares or merchandize, — keeping open any ale or porter house, grocery or tippling shop, — & selling or retailing any fermented or distilled liquor, on the first day of the week, commonly called Sunday."

The indictment charged, that the defendant on &c. at &c. "did then & there unlawfully keep open a grocery by then & there permitting persons to enter said grocery & then & there to drink intoxicating liquors."

The proof was, that the witness & others opened the door of defendant's grocery — went in & immediately shut the door after them — that two of them took a dram — that defendant set out the liquor — that defendant did not sell the liquor — that the door of the grocery had been shut previously to the entrance of witness & his friends & that it was not permitted to stand open.

The Court instructed the jury as follows:

1. If the jury shall believe from the evidence that the defendant at any time within one year before the finding of the indictment & within the county of Sussex kept open a grocery upon the first day of the week commonly called Sunday they should find the defendant guilty.

2. If the defendant was the keeper of a grocery and permitted persons to enter it on Sunday &

to drink intoxicating liquor in such grocery it was keeping open such grocery within the meaning of the Statute.

The defendant asked several instructions which in substance were designed to declare the law to be, that the facts proved by the witness & referred to in the instructions given would not of themselves constitute the offence, prohibited by the act, unless the jury were satisfied that such acts were done or permitted with a view to evade the law, or to allure customers, or to carry on his usual business. These instructions were refused, & a verdict was found against the defendant.

The indictment we think sufficient, as the charge is in the words of the statute, & the definition of the offence attempted may be rejected as surplusage. Nor are we prepared to say, that the evidence was not sufficient to justify a verdict - but we think the defendant's instructions should have been given or some explanations equivalent thereto.

The object of this statute is very plain - it is to prohibit a continuance of certain employments on Sunday, under certain named penalties. All traffic in merchandise of every description is to cease on Sunday & all retailers or vendors of liquor are to cease their occupation on that day. It is of no consequence whether the door of the grocery or dram shop is kept open or shut; - if the business of the week is carried

or openly or secretly, the law is broken. A grocery keeper, under the present law, has no authority to retail spirituous liquors at any time. The simple fact, that he permits one or more acquaintances to enter his grocery & drink spirituous liquors on Sunday, is not of itself a breach of this law - it may be of another. It may be evidence & very sufficient evidence to authorize a conviction under this law - depending upon circumstances & motives to be determined on by the jury. If the jury are satisfied that such acts are done for the accommodation of customers & are in truth a continuation of the usual occupations of the week, they may very well find the defendant guilty. There may be attempted evasions of the law, & the jury must judge of these matters; - but it is very obvious, that the defendant may have done every thing which is hypothetically stated in the instruction given by the Court, & yet be totally innocent of a violation of the Sabbath. Juries are however very likely to be able to draw ~~very~~ correct conclusions, upon such evidence, & can readily ~~perceive~~ understand the motives of certain acts. But the jury must have an opportunity of pushing upon the intent as well as the act. The Court in this case did not allow the question of intent to go to the jury. Very

likely the verdict would have been the same – but we cannot know how this might have been & must therefore reverse the judgment & remand the case.

The other judges concur.

W. B. Napton

28.

The State
v.
Pink Crabtree

Opinion of the Court

Reversed
Napton

filed Sept. 22 1858
Wm Edmunds
Clerk

In the Supreme Court
July Term 1858

The State
against } appeal from Laclede
Pink Crabtree — appellant

At the September term 1857, Crabtree was indicted for keeping open a grocery on Sunday.

The indictment (omitting the caption and commencement) charges that Pink Crabtree late of &c on &c the same being the first day of the week commonly called Sunday, at &c did then and there unlawfully keep open a dramshop by him and then and there permitting persons to enter said dramshop and then and there to drink distilled liquor against the peace and dignity of the State. And the jurors aforesaid upon their oath do further present that Pink Crabtree late of &c on &c the same being the first day of the week commonly called Sunday, at &c did then and there unlawfully keep open a grocery, by then and there permitting persons to enter said grocery and then and there to drink intoxicating liquors against the peace &c.

Defendant (at March term 1858) moved to quash the indictment, alleging three reasons 1 that it is not stated in said indictment that the liquor was not ~~intended~~ imported for medical purposes. 2 No indictable offence is charged.

the motion was overruled. A trial was then had, by a jury and defendant found guilty and fined five dollars. Defendant filed motion to set aside the verdict and grant a new trial

1 Because Court erred in refusing proper and legal evidence offered by deft

2 Court erred in permitting improper evidence to go to the jury

3 Court erred in giving improper and illegal instructions to the jury for the State

4 Court refused proper instructions asked by deft

5 verdict is against law & evidence

The motion was overruled. Deft tendered bill of exceptions and prayed an appeal to this Court which was granted.

James Appling a witness for the State stated that he and others on a Sunday within twelve months before the finding of the indictment opened the door of a grocery kept by defendant in said County. They went in and immediately shut the door after they entered the grocery: That two of them took a dram. Defendant set out the liquor in the grocery while the defendant was present. That deft did not sell the liquor drank. that the door of said Grocery had not been standing open previous to said persons entering on said day, nor was it permitted to stand open.

This was all the evidence in the cause

the following instructions asked by the State were given

1 If the jury believe from the evidence that deft at any time within one year before the finding of the indictment and within the County of Lacledé kept open a grocery on the first day of the week commonly called Sunday they should find defendant guilty

2 That if the deft was the keeper of a grocery and ~~that~~ he permitted persons to enter it on Sunday and drink intoxicating liquor in such grocery it was keeping open his grocery within the meaning of the statute.

To the giving of said instructions deft excepted. The following instructions was ~~asked~~ given by the ~~defendants~~ Court of its own instance

* Unless the jury are satisfied beyond a reasonable doubt of the guilt of defendant they must acquit.

Deft asked the following which were refused.

1 The opening of a door of a grocery and going in on Sunday and after a person has entered said grocery, giving him a drink of liquor is not such a keeping open of a grocery door, as is contemplated by the statute, and in order to convict the jury must believe from the evidence that said door was opened with a view to evade the law. or to allure customers

or to carry on his usual business

2. Although the jury may believe that deft opened the grocery door they will find him not guilty unless they believe he opened the grocery door with a view to evade the law, or to allure customers or to carry on his usual business

3 The Court instructs the jury that although they may believe ~~that~~ from the evidence that two or three persons did enter the grocery of deft on Sunday and drink spirituous liquor in said grocery in the County of aforesaid and within twelve months from the second day of October 1857, that they should not find deft guilty unless they further believe from the evidence that said drinking was permitted by deft to allure customers or to carry on his ordinary business

The Court refused to give those instructions to which deft excepted.

Ewing, Attorney General for the State

1 The indictment is sufficient. 36. Section 8 Art. Crimes & Pun. 1 RS 1855 p 631. The exception as to the sale of drugs or medicines, not being contained in the clause of the statute creating the offence, but in a subsequent one, need not have been negatived in the indictment

State v Rufard 10 Mo Rep 703.
State v Sutton 24 Mo Rep p 377.

There was no error in overruling motion for a new trial. The instructions refused were not the law. Those given presented the law of the case fairly to the jury: and the evidence warranted the verdict.
If the offence charged, does not consist in permitting persons to enter the grocery or tippling shop, at pleasure, on Sunday — whether the door or other means of ingress is actually kept open or not, — the statute is nugatory.

No 28.

State
vs
Crabtree app

Statement and
brief for State

In the Supreme Court
July S. 1858

State of Missouri
vs
Pink Crabtree } Error to Laclede

This case is upon an Indictment found at the sept Term 1857. It contains two counts. The first count charges the keeping open a dramshop on Sunday. The second count is for keeping open a grocery on Sunday.
A motion was filed to quash the indictment which was overruled
Upon the trial there was no evidence whatever as to the first count.
The state introduced one witness only to support the second count who stated that he & others opened a door of a grocery kept by defendant. They went in and immediately ~~took a drink~~ shut the door. It had not been standing open. Two of them took a dram. defendant set out the liquor but did not sell it. The door was not permitted to stand open. This was all the evidence

the court instructed the jury for the state

1st If the jury believe from the evidence that defendant at any time within one year before the finding of the indictment and within the county of Lacleede kept open a Grocery on the first day of the week commonly called Sunday they should find the defendant guilty

2d And the court instructs the jury that if defendant was the keeper of a grocery and that he permitted persons to enter it on Sunday and drink intoxicating liquors in such Grocery it was keeping open his Grocery within the meaning of the statute

Defendant objected & excepted.

Defendant asked the following instructions

1 The opening the door of a Grocery and going in on Sunday and after a person has entered said Grocery, giving him a drink of liquor is not such a keeping open of a Grocery door as is contemplated by the statute, and in order to convict the jury must believe from the evidence that said door was opened with

a view to evade the law or to allure customers or to carry on his usual business.

2d although the jury may believe from the evidence that the deft opened the grocery door they will find him not guilty unless they believe he opened the grocery door with a view to evade the law or to allure customers or to carry on his usual business.

3d the Court instructs the jury that although they may believe from the evidence that two or three persons did actually enter the grocery of defendant on sunday and drank spirituous liquor in said grocery in the County of Lauderdale and within twelve months from the 2d day of October 1857 that they should not find defendt guilty unless they further believe from the evidence that said drinking was permitted by defend to allure customers or to carry on his usual business.

The court refused to give them and defendant excepted —

Deft was convicted & fined — He filed a motion for a new trial — which was overruled — He excepted — and brings the case here by writ of error —

Points & authorities

F P Wright for Deft

1 Both counts in the indictment are bad & the motion to quash should have been sustained.

The first cent does not pursue the language of the statute — Drawshop is the word used in the ~~statute~~ indictment — and lippling-shop in the statute — The precise language of the statute should have been pursued — 1 Chitty Crim Law 381. The law requires this to be done; that the party may be protected from a subsequent prosecution for the same offence —

2d. The second count is also bad — The charge amounts to nothing more than permitting persons to enter a grocery and drink spiritous liquors — Grocers merchants & dealers in drugs & medicine are all

on the same footing under our statute -
To sell liquor by the drum is not a part
of his business - A grocery cannot be
said to be kept open unless the offender
is there, ready & willing to do business -
& affording others an opportunity to
trade -

3d

The instructions on the part of the state
were wrong and those asked by
defendant are the law & should
have been given -

The State of Missouri
vs
Pink Crabtree

Deft Brief

F. P. Wright