No. 14294

Supreme Court of Illinois

Mullen

vs.

People

71641 7

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1862.

PATRICK MULLEN, Plff. in Error. *vs.* THE PEOPLE OF THE STATE OF ILL., Deft. in Error.	*Error from Cook County Circuit Court.*

ABSTRACT OF CASE.

1, 2 Indictment of plaintiff in error for manslaughter, in said county of Cook.

4 The jury find the plaintiff in error guilty, and fix his punishment at one year in the penitentiary, whereupon plaintiff in error moved the Court for a new trial of said cause, and in arrest of judgment.

5 Motion for a new trial and in arrest of judgment overruled by the Court at the same term, and on the 20th day of September, A. D. 1861.

6 On same day and year last aforesaid, said defendant, by his attorney, filed in the said Cook County Circuit Court his certain bill of exceptions, in words and figures following, to wit:

PEOPLE *vs.* PATRICK MULLEN. } Be it remembered, that on this 20th day of September, A. D. 1861, it being one of the days of the September Term of said Court, and on the trial of said cause, after all the evidence was in and the instructions given to the jury, at the request of Carlos Haven, Esq., State's Attorney, the Hon. George Manierre, Judge of said Court, then and there presiding, instructed the jury before whom said cause was tried, that if they should find the defendant guilty as charged in the indictment, they should fix his term of imprisonment in the penitentiary not less than one year, and might fix it for his natural life, and thereupon said jury retired to consider their verdict.

GEORGE MANIERRE, [SEAL.]
Judge of 7th Judicial Circuit, Ills.

THE ERRORS ASSIGNED.

1st. That the said Judge of the Circuit Court, before whom said cause was tried, erred in instructing the jury in said cause, that if they found the defendant below (here plaintiff in error) guilty, they should fix his term in the penitentiary at not less than one year.

2d. That the said Judge erred in overruling the motion for a new trial and in arrest of judgment.

ARGUMENT OF PLAINTIFF IN ERROR.

The validity of the errors assigned depends upon the construction of the statute of 1845, and the amendatory statute of 1859. Under the former, a convict could be sent for a shorter term than one year; then, if that statute is not repealed, the exception is well taken. It has not been expressly repealed; the statute of 1859 contains no repealing clause.

Is it repealed by implication? We think not, because each is so far consistent with the other, that they may be construed to form a whole; and being a criminal statute, the Court will infer nothing that adds to punishment, but will give that construction most consistent with mildness. Again, they will give the statutes that construction that will keep both statutes alive, if in doubt as to whether it was the intent of the Legislature to repeal the one by the enactment of the latter. Taking both enactments, we insist that a convict may be sentenced for any period extending to natural life. If this be a correct view, the judgment should be reversed.

EDWARD G. ASAY,
Attorney for Plaintiff in Error.

152 ~~10~~ .3.

Patrick Moulin
vs.
The People

Abstract

Filed May 15. 1862
S. Leland
Clk

Supreme Court of the State of Illinois
April Term A.D. 1862

Patrick Mullen
vs. } Error to Cook
The People &c

Points for the People

It is not necessary in this case to enquire whether the instruction given by the court is erroneous
The defendant did not except to the giving of the instruction & it is now too late for him to object to it.

3 Scam 17.
12 Ill 89
13 " 88
1 Scam 281
3 " 564
13 Ill 342
2 Gil 293
12 Ill 76
13 Ill 700
11 Ill 84 - 587

L. D. Jones
State's Atty

152

P. D. 40

Mullen

vs

The People

152

People's Points & Authorities

14691

Filed May 15. 1862

S. Leland

Clk