

People &c } Conviction for Arson
 Reuben Clark & others } On writ of error
 Assignment of errors

1st That the indictment does not charge the offence to have been committed feloniously.

2nd That it was not laid to be in the year of our Lord.

3rd That the Sept Reuben Clark filed his petition supported by affidavit according to the statute for a change of venue; which the Court would not award, but disallowed the same

Walter B. Seates Atty for Sept

And the said people come and say that in the record and proceedings aforesaid and in the Judgment aforesaid there is no error or.

James Temple

Atty Gen?

Renton Clark
as 3 Apt of em
People

film March
20th 1833
J. M. Duncan

295

Clark vs People

1. That Ind. omits to charge value & is under the Stat. 1827 finding the jury responsive to that
2. May err in refusing charge of Verdict
3. as to the word Felonious
4. as to the year of the Lord.

Clark
104
People

295

Supreme Court of Illinois

Reuben Clark

The People of the State of Illinois { Assignment of Errors

And the said plaintiff by his atty.
Comes and says that in the proceedings and rendition of Judgment
in this cause in the court below, there is manifest Error: - in this

1st - The plaintiff filed his petition and affidavit and moved the court
for a change of venue; which motion the court over-ruled. &
refused to award a change. — and

2^{ndly} Thereupon the plff. moved to quash the Indictment: Because

1st - It does not aver that the offence was committed feloniously

2nd It does not state the value of the property burned; And

3rd It does not aver the year to be the "year of our Lord?"

which said motion the court over-ruled: and

sustaining the Indictment: And there is Error also in this

3^{rdly} That the court gave Judgment for the plffs below. and a-
gainst the Deft. for which Errors the plff in Error prays
that the decisions of the Court below, may be reversed. An-
nulled. & for nothing esteemed &c

Joiner in Error

Samuel Lemp
att'y Genl

Walter B. Seates Counsel for plff in Error

Supreme Court

Reuben Clark
The People of

Assignment of Errors

Filed Dec. 2^d 1833

Asm. Duncan
Clark.

Supreme Court On writ of Error

Reuben Clark
or
The People &c

Plaintiff's Brief

The plff. in Error was indicted with three others in the Hamilton Circuit Court for arson. The plff. and one other only, were arrested: the other Dept below, was ready for trial in the same court the plff. filed a petition and affidavit, and moved the court for a change of venue: the court over-ruled the plff's motion, and refused to award a change of venue, which is the first Error assigned.

1st The plaintiff thereupon moved the court to quash the Indictment. Because It does not charge the crime to have been committed, with a felonious intent: and

2ndly It does not state the value of the property burned, which is the second Error assigned.

3rd There is Error in the Judgment of the court in over-ruling the plff's motion for a change of venue.

at common law the venue must be laid where the offence was committed 1 Chit. C. L. 177. 3. 4 Bla. Com. 303. — And at common law the venue was matter of substance 1 Chit. C. L. 177. — And so strict was the law in this respect that where an offence was commenced in one county, and consummated in another, it could be tried in neither (except in some cases, crimes, as larceny in some cases) 1 Chit. C. L. 178. 4 Bla. Com. 303.

12 But this strictness has been remedied by Stat. so that the Dept may be tried where the death happened, or the guilt was contracted, or the offence consummated 1 Chit. C. L. 179. 180. — Or where the offender was apprehended id 181. or in the adjacent county *ibidem*: or in any county id 181. 2.

10 But notwithstanding this great strictness of the common law, the court possessed a discretionary power to change the venue, when a fair and impartial trial could not be had in the county 1 Chit. 201. 327. 494. 5. The courts at common law possessed the like power in civil cases 1 T. R. 548. 9.

A certiorari lay at common law to remove an Indictment at any time before trial, which was one mode of changing the venue 1 Chit. C. L. 327. 371 to 378. 4 Bla. Com. 320. 1. + see further as to venue 2. Ins. Sig. 276. to 278.

Penal Statutes must be construed strictly, and in favour of life

and liberty 1 Bla. Com. 86. to 89. & notes 4 Bla. Com. 240 (note 10) 373. 5. 6. 397. 401
1 Chit. C. L. 218. Foster C. L. 78. 355. 8. 1 Am. Dig. 269. 2 Am. Dig. 285. 4. 295.
2 East C. L. 592. 3. 614. 5. 629. Stat. 10. 11. Wm. 642. 3. 1099

In capital cases the Deft. stands upon all his rights and cannot consent
to his prejudice Breese Rep. 109. Foster 126. 355. 6.

And by the constitution of this state, a fair and impartial trial
by jury is secured to every man See 9 Sec. 8 Article Constitution
See also Foster 398. — And the statute providing the mode of
changing the venue is peremptory, that the court ~~shall~~ award
a change, when the application is made in the mode, and for the
causes set out in the statute Rev. L. 382. See 2

quodly

There is error in the dicta of the court in over-ruling the ~~plff's~~
motion to quash, and sustaining the indictment —

Arson is felony at the common law. 4 Bla. Com. 94. 221. 2. 2 East C. L. 1015 to 21
And must be malicious 4 Bla. Com. 222. 2 East C. L. 1019. 1033

The criminal intention must accompany the act, and from the intention
alone it is determinable, whether the act be criminal or innocent
it is alone punishable, being the very gist of the charge: And
certain technical words alone, express that intention according to
the different degrees of guilt: and they cannot be supplied by
any circumlocution or inference 1 East C. L. 446. 7. ^{11 Chit. C. L. 1234} At in burglary
a mere breaking and entry is not sufficient & do not constitute and
complete the offence, but it is necessary to charge & prove a fe-
lonious intent, and that charge is contained alone in the words
burglariously and feloniously 1 Chit. C. L. 172. 241. 3. 4 Bla. Com. 307. 38. 9.
Foster C. L. 108. 2 East C. L. 513. 14. 778. 816. 1015 to 1021. 1028. 9. 1033

The same doctrine applies to other felonies. See same authorities

Not-guilty puts in issue not only the fact, but the intent of the
party, and feloniously in felony is the gist of the charge
4 Bla. Com. 338. 9. Breese Rep. 197. 8. 9. 1 Chit. C. L. 471. 2. 242 to 245. 251 a

Felonies must be charged to be committed feloniously: but if
an act be charged to be committed feloniously, & it amount to a
trespass only, the indictment will be bad 1 Chit. C. L. 172. 241. to 2
1 East C. L. 346. 4 Bla. Com. 307. 334

If a statute create an offence, or change a common law offence or alters the punishment: to inflict the statutory punishment its language must be pursued in describing the offence: and it must likewise possess the common law requisites in charging the intent 1 Chit. C. L. 276: 281: 2. 218. 1 Hale. 174. 4 Bla. Com. 208: 307: 338.

Bac. Ab. Indict. G. 1. 1 East C. L. 346: 412: 14: 15: 20. 2 East C. L. 576: 7. 706. 985. 1006: 7. 1106: 7. 16: 17. Breen Rep. 197: 8: 9.

The same rules apply to Indictments under stat^s, as at common law 1 Chit. C. L. 275. And all the precedents at common law & under stat^s support ^{& following} this doctrine 4 Bla. Com. 307: 334: 8: 9. 347. & appendix 24. 1 East C. L. 345: 6. 414. 412: 415: 20. 2 East C. L. 512: 3. 783. 979: 987. 1007. 1021: 2: 5: 9: 33: 34. 1 Chit. C. L. 172. 242. Breen Rep. 197: 8: 9.

Acts derogatory to the common law are construed strictly 1 Bla. Com. 89. A statute has not repealed the common law in its technicality in charging the intent to determine the degree of guilt: but if at all only in the description of the offence, or acts that constitute it see Rev. L. Secs 58: 152. 1 East C. L. 412: 14: 15: 20.

2 East C. L. 577: 804: 5. 1061: 2.

The p^lff in error cannot be convicted of felony under this Indictment, but only of a misdemeanor 1 Chit. C. L. 637: 8.

1 East C. L. 1030: 1. Rev. L. c. code. sec 59.

For the Indictment cannot be amended 1 Chit. C. L. 279. 1 Stark. Ev. 252: 3. 1 Saund. 250 d & note 1. Rev. L. 67. sec 14.

All the rules (with that exception &c) that apply to civil pleadings apply with greater strictness to criminal: and an Indictment should be as certain clear & explicit as a declaration 1 Saund. 250 d & note 1. 1 Stark. Ev. 252: to 255. 1 Chit. Pl. 216 to 237. 255. 4 Bla. Com. 306: 7. et notis.

1 Chit. C. L. 169. to 175. 280: 1. Breen Rep. 4.

The Indictment is defective in not stating the value of the property as if the property be valueless, it should be no offence: the law requiring the court to pronounce Judgt of fine, at least to the amount of the value of the property see Rev. L. 133 sec 58: also.

2 East C. L. 778. 1 Stark. Ev. 252 to 55. 1 Chit. Pl. 216. to 37. 255. 4 Bla. Com. 306: 7. et notis. 1 Chit. C. L. 169. to 175. 280: 1. 1 Saund. 250 d & note 1. Breen Rep. 4.

Where several are indicted together and the joint prosecution appears oppressive, the court may in its discretion quash the Indictment 1 Chit. 289. For it does not deprive them of any right: not even of their number of challenges id 355. — And if they refuse to join in their challenges, they must be tried separately ibidem. Foster C. L. 21: 106: 7.

And ~~so~~ further the Indictment is defective in not averring the Year to
be the Year of the said Lord's Grace Rep 4. 1 Chit Pl. 216.
to 226. 169. to 175. 280. 81. 1 Saund 250 d 2 note 1. 1 Stark Ev. 252 to 55
1 Chit Pl. 216 to 237. 255. 4 Bla Com 306. 7. et notis

Matter B Seated Counsel for Jefferson Error

Archbold's Criminal Practice 15, 139. 140
Chitty's Criminal Law.

Supreme Court

Reuben Clark

or
The People &c

{ Briefs

Justice

Lockwood

Reuben Clark, Error from Haysville
The People &c)

12 The plaintiff in error was indicted with three others for the crime of arson, upon the calling of the same, he moved the court for a change of venue, the motion was founded on an affidavit in the usual form, and assigns for cause, that he can not receive a fair trial in the city in which his cause is pending, because of the prejudice of the members of the inhabitants of said city against him, which motion was overruled by the Court. A motion was then made to quash the indictment, ~~on which~~ motion ~~it~~ was also overruled by the Court, and an exception taken to the ~~overruling~~ ^{giving} of the Court on both the motions.

12 The decision of the Court on the first motion was clearly erroneous. The Constitution secures to every person charged with an indictable offense, a trial by jury, in order that this trial may be a fair and impartial one, the law has given to the accused many privileges, among them the right to a change of venue, is, in some instances, the most important, and being by petition, verified by affidavit, he brings himself within the regulations of the statute, the obligation of the judge or Court to allow it, is imperative, and admits of the exercise of no discretion, on account of any supposed inconvenience that may result from the exercise of the privilege.

It is argued that if the venue should be changed on the application of one of several defendants indicted jointly, that it would be difficult, if not impossible to try the others, as the indictment would have to be sent to the adjoining ^{city} with the accused. It is unnecessary to enquire whether any, or what inconvenience may arise from a change of venue under such circumstances, whatever they might be, can be avoided by preferring separate indictments ^{against each}. This practice I am aware is unusual, but it is better upon every principle of justice that it should be adopted, than that the State Attorney should, by his own act, be permitted to permit to be withdrawn from a party an important privilege, which has been secured to him by the law as one of the means of obtaining impartial justice.

The next enquiry is whether the court erred in overruling the motion to quash the indictment, and afterwards rendering judgment upon the verdict of the jury.

The indictment does not allege the value of the building charged to have been burned, this would probably be unnecessary at common law, as a fine formed no part of the punishment for the offence. The Statute however under which this indictment is found, has changed the common law in this respect; a fine equal in value to the property burned is imposed as part of the punishment for the offence, the indictment ^{ent} then should have charged the value of the property destroyed,

otherwise it could not properly
have been inquired into by the jury,
it formed no part of the issue which
they were sworn to try, in this
respect then the indictment is
~~more~~ defective, and the court erred
in overruling the motion to
quash it, and in rendering
judgment upon the verdict
of the jury.

There are other exceptions taken
to the sufficiency of the indictment
but it will be unnecessary to notice
them, as for the reasons already
assigned the judgment of the
court below must be reversed, and
the prisoner ordered to be discha-
rged.

Wm. Wilson

Each
a.
The People

Spina by ~~Liberty~~
Wilson

296