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THE KNOXVILLE WHIG.

Knoxville, Tenn., Dec. 5, 1866.

Supreme Court Opinion.

KNOXVILLE, TENNESSEE, SEPTEMBER TERM, 1866.

THOMAS H. COLDWELL, Attorney General and Reporter.

DAVID N. BUSBY, Guardian, &c., vs. JOSIAH J. BACON.

On the 25th of November, 1865, plaintiff in error, as Guardian of Penelope Smith, recovered a judgment before a Justice of the Peace for Blount county, against defendants in error, as Guardian of James Smith, recovered a judgment before the same Justice and against the same persons in $204 24.

Afterwards, J. J. Bacon, one of the defendants, filed a petition in the Circuit Court of said county, and obtained writs of certiorari and Supersedeas, to the end that certain executions which had been issued upon said judgments be brought into said court and quashed. The writs were served at the March term, 1866, of said court, upon motion of the plaintiff, rule nisi was by judgment of the court dismissed.

Thereupon the plaintiff moved the court for a judgment against the petitioner, Josiah J. Bacon, and Allen R. Bacon (his security in the bond), for his costs in the premises, for the amount of the judgments of the Justice of the Peace, and twenty and a half per cent. interest per annum thereon, from the date of the same. The court refused to pronounce the judgment asked for, and proceeded to award a procedendo to the Justice, and rendered a judgment against the petitioner, and his sureties for costs only. From the action of the court in refusing the judgment asked for, the plaintiff has appealed to this Court.

Section 3,157 of the Code, provides, that upon an affirmance of the judgment below, &c., or "upon dismissal of the certiorari for want of prosecution or for any other cause, the court shall enter up judgment for the amount recovered, against the principal and the sureties in the obligation, with interest at the rate of twelve and one-half per cent. per annum, from the date of the judgment or decree below, and all costs."

Under the provisions of this section, it matters not for what purpose the certiorari is sued out. Upon its dismissal "for any cause, the court shall enter up judgment against the principal and his sureties, &c." The language of the statute is imperative. The plaintiff was entitled to the judgment below, and the refusal to render the same was error. At Bond. Thereon will render such judgments as the Circuit Court ought to have rendered against the principal and his sureties in the prosecution bonds. The plaintiff will also recover against the principal six per cent. per annum, on amount of said judgment from date of judgment in the Circuit Court up to the time and date.

HAWKINS, Judge.

A true copy. Test: M. L. PATTERSON, Clerk.

SUPREME COURT OPINION.

KNOXVILLE, TENNESSEE, SEPTEMBER TERM, 1866.

THOMAS H. COLDWELL, Attorney General and Reporter.

THURMAN THURSTON vs. THE STATE.

The plaintiff in error was convicted at the May term, 1866, of the Circuit Court, for the county of Monroe, of an assault and battery, upon one Wiley Watson, with a whip, having in the possession at the time a deadly weapon, with intent to intimidate said Watson, and prevent him from defending himself. The jury fixed the time of the imprisonment in the penitentiary at three years.

A new trial was asked for, which was refused, whereupon the court proceeded to pronounce judgment upon the verdict. To reverse which an appeal is prosecuted to this court. It is insisted by the plaintiff in error that the record is totally defective, and therefore the judgment must be arrested. To this it is answered by the Attorney General, upon the part of the State, that this court will not arrest the judgment for any error, unless the record be defective, so that the plaintiff in error entitled to enter a motion in arrest in the court below. Upon this point we have been unable to find any direct authority, and counsel likewise admit that they have been unable to find any either a thorough examination. But the weight of authority seems to be, at least such seems to have been the practice in this State from the earliest judicial records, down to the present time, that in criminal proceedings, if the record is free from any suggestion of the record that is in fact defective it will screen the judgment therein, although no one in error was entered in the court below, and it seems to us to be quite well established upon principle.

We come now to consider of the question, is the record in fact defective? and we think it is.

The indictment is entitled of the May term, Circuit Court, A. D. 1866, and so endorsed: "Wiley Watson, Prosecutor," also a true bill, John Kimble, foreman of the Grand Jury, but no endorsement appears on the back of the indictment, by whom it was returned into court. The record wholly fails to show whom, or by whom, the May term of Circuit Court for Monroe county was holden, and made from references we may make from the indictment itself and the endorsement thereon, is somewhere approximate to a conjecture that any such court was in fact holden. It does not appear that the indictment was signed upon the authority of the court, or that the same was returned into court by the Grand Jury. Neither does it appear that any such person had ever been sworn and acted as foreman of such Grand Jury.

But it is insisted by the Attorney General that defects are all cured by the provisions of section 3,782 of the Code. We do not think so.

This section of the code came before this court for judicial construction last winter, at Nashville, in the case of the State vs. Charles Davidson, a free man of color. See Memphis opinion, in which the court said: "We cannot give to a statute of the character a greater latitude of construction than is warranted by the plain and obvious import of the words of the statute. But the Legislature never intended that a person who had had their lives taken from the earth by the "hangman," and executed should not be entitled to a new trial or arrest of judgment, because of the existence of all the errors enumerated in that section."

We cannot believe the Legislature could have intended or desired to effect a change so radical in the criminal practice of this State, or that the language employed in that section will warrant any such construction. The language is "the plaintiff shall not be entitled," &c. "For any of the following causes," and must be construed as though it read "for any one of the following causes."

This we believe to be the obvious meaning of the language employed, and, even conjecturally, if more than one of the causes mentioned exists, and each causes would not for the purpose of that section, entitled the party to a new trial, or to an arrest of judgment, or to a reversal of the judgment.—Such party is entitled to the relief, notwithstanding the provisions of that section.

Applying these principles to the record before us it is clear that by well settled rules of criminal practice in this State the judgment of the Circuit Court must be reversed and arrested. The prisoner will be remanded to the county of Monroe, to be protected against dowers or discharged.

HAWKINS, Judge.

A true copy. Test: M. L. PATTERSON, Clerk.

SUPREME COURT OPINION.

KNOXVILLE, TENNESSEE, SEPTEMBER TERM, 1866.

THOMAS H. COLDWELL, Attorney General and Reporter.

JOHN DAVIS in error, vs. THE STATE.

At the October term, 1866, of the Circuit Court for the county of Knox, the Grand Jury returned into court a bill of indictment against the plaintiff in error, in which it is alleged that John Davis, late of said county, colored, on the fourteenth day of September, eighteen hundred and sixty-six, in the county of Knox aforesaid, feloniously and burglariously, did break and enter the mansion house of Peter Scott, with intent to commit a felony, to wit, to commit a larceny, and steal, carry and carry away, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.

At the same term of the court the prisoner was arraigned and plead not guilty to the charge, and thereupon, the cause was submitted to a jury, who returned a verdict against the defendant of "guilty in manner and form as charged in the bill of indictment," and fixed his term of imprisonment in the penitentiary at fifteen years.

The defendant moved for a new trial, which was refused, and thereupon, the court proceeded to pronounce judgment against the defendant as follows:

"It is therefore considered by the court that for the burglary aforesaid, the defendant shall be confined in the jail house and Penitentiary of the State, at Nashville, at hard labor, for the period of fifteen years, &c."

To reverse which the defendant has appealed to this court. The first question is, Does the indictment with sufficient certainty charge the prisoner with the crime of burglary?

Burglary is defined by the common law, as well as by our statute, Code, section 3,472, to be the breaking and entering into a dwelling or mansion house by night, with intent to commit a felony.

The indictment fails to charge that the act was done in the night time.

An indictment must charge all the facts and circumstances, the presence of which are necessary to constitute the offence, with such certainty that the defendant may know whether they constitute an indictable offence or not. 2 Hum. 44.

To constitute the crime of burglary, it is indispensable that the act of breaking and entering the dwelling or mansion be done in the night time, as that it be done with the intent in such a house, and the indictment must charge that it was done in the night time.

So in the case of Thompson vs. Cone, 6th Leigh 655, it was held that an indictment charging that goods were feloniously and burglariously taken from a dwelling house, without charging that it was done in the night time is not a good indictment for burglary. Wharton crim. law, 618, and it has been held even in Connecticut, that an information for burglary, in the night time, that the prisoner feloniously and burglariously broke and entered, without alleging that the acts were done in the night time, or stating, as what hour they were done, are, and that the jurors, upon their oaths and judgment thereon, do say that the said prisoner was not guilty in the manner and form as he stands charged in the said information. Lewis, 1 Conn. 486, and in which it was holden that an indictment charging that goods were feloniously and burglariously taken from a dwelling house, without charging that the act was done in the night time, is not a good indictment for burglary. It was also held that an indictment for burglary, in the night time, with intent to commit a felony, to wit, to steal, charging that the defendant did break and enter the house of the prosecutor, with intent to steal, &c., the indictment contained no other allegation of the intent, and that the court held that the indictment was not sufficient to warrant a judgment against the defendant. Wharton crim. law, 618, and it has been adjudged in Connecticut, that an information for burglary, in the night time, that the prisoner feloniously and burglariously did break and enter the house of one Wiley Watson, with a whip, having in the possession at the time a deadly weapon, with intent to intimidate said Watson, and prevent him from defending himself. The jury fixed the time of the imprisonment in the penitentiary at three years.

A new trial was asked for, which was refused, whereupon the court proceeded to pronounce judgment upon the verdict. To reverse which an appeal is prosecuted to this court. It is insisted by the plaintiff in error that the record is totally defective, and therefore the judgment must be arrested. To this it is answered by the Attorney General, upon the part of the State, that this court will not arrest the judgment for any error, unless the record be defective, so that the plaintiff in error entitled to enter a motion in arrest in the court below. Upon this point we have been unable to find any direct authority, and counsel likewise admit that they have been unable to find any either a thorough examination. But the weight of authority seems to be, at least such seems to have been the practice in this State from the earliest judicial records, down to the present time, that in criminal proceedings, if the record is free from any suggestion of the record that is in fact defective it will screen the judgment therein, although no one in error was entered in the court below, and it seems to us to be quite well established upon principle.

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HAWKINS, Judge.

A true copy. Test: M. L. PATTERSON, Clerk.

DRY GOODS, &c.

NEW & BEAUTIFUL GOODS.

SINCE PURCHASING OUR LARGE STOCK OF

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The patronage of our FRIENDS and CUSTOMERS has been so liberal as to compel our Mr. BOYD again to go to

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A Magnificent Supply OF FRESH AND SEASONABLE GOODS,

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WE SHALL SELL ALONE FOR CASH AND AT THE SAME PRICES TO ALL CUSTOMERS, DISPENSING WITH THE SHALLOW HUMBUGGERY THAT PRETENDS TO SELL TO ONE CUSTOMER FOR LESS THAN TO ANY OTHER.

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Of Reserved Pianos and Melodeons, Fine Oil Paintings, Engravings, Silver Ware, Gold and Silver Watches, and Elegant Jewelry, consisting of Diamond Pins, Diamond Rings, Gold Brooches, Gold Pens, Gold and Silver Watches, Gold Pens, with Gold and Silver Extension Holders, Gold Spectacles, Sets of Studs, Vest and Pant Chains, Plain and Chased Gold Chains, &c., &c., valued at

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which they need not pay until it is known what is drawn and its value.

THE AMERICAN JEWELERS' ASSOCIATION calls your attention to the fact of its being the largest and most popular Jewelry Association in the United States. The business is and always has been conducted in the most candid and honorable manner. Our rapidly increasing trade is a sure guarantee of the satisfaction of our patrons by the distribution of articles rich, elegant and costly goods. The sudden stagnation of trade in Europe, owing to the late German War and recent disastrous financial crisis in England has caused the failure of a large number of jewelry houses, and we are enabled by being able to sell their goods at a great sacrifice, in some instances less than one-third the cost of manufacturing. We have lately purchased very largely of these Bankrupt Goods, at such extremely low prices, that we can afford to send every First Class Gift, and give Ladies' Gold Watches, at the following prices than any other establishment doing a similar business. OUR AIM IS TO PLEASE, and we respectfully solicit your patronage, as we are confident of giving the utmost satisfaction. During the past year we have furnished a number of the most valuable prizes in all parts of the country. Those who patronize us will receive the full value of their money, as no article on our list is worth less than One Dollar, retail, and there are no blanks. Prizes dealing with the U. S. Express Company are not allowed. Prizes will be promptly delivered, and the entire drawn, will be immediately sent to any address by return mail or express.

The following persons have recently drawn valuable prizes from the American Jewelers' Association, and have kindly allowed the use of their names:

Charles J. Hunter, Esq., Treasury Department, Washington, D. C., Piano, value $600; Miss Anna G. Yates, 10 St. Mark's Place, N. Y., Sewing Machine, value $75; Maj. Gen. G. C. Meade, U. S. Vols., Nashville, Tenn., Silver Watch, value $150; Miss Emma Hunter, of Penn St., Harrisburg, Pa., Sewing Machine, value $60; Lieut.-Col. Walter Christmas, Quartermaster, Louisville, Kentucky, Gold Watch, value $100; Mrs. Sarah Ann Ward, No. 87 River St., Chicago, Ill., Piano, value $600; Alexander Johnson, Esq., Rising Manufacturer Pioneer, Muskatatuck, Miss., Silver Hunting Watch, value $100; Samuel Lee, Esq., President Colorado and Red Rock Mining Company, San Francisco, Cal., Diamond Ring, value $300; Mrs. A. Long, Rev., Principal Atlantic Collegiate Institute, Elizabeth, N. J., Diamond Pin, value $300; E. M. Lougstreet, Rose parlor, Alb., Music Box, value $75; Rev. Isaac Van Duzer, Albany, N. Y., Gold Lined Dining Set, value $200; Miss Clara Lanegner, Dayton, Ohio, Parachute, value $100, and Diamond Pin, value $175.

Many names could be placed on the List, but we publish no names without permission. Our patrons are doubly safe, and United States Certainty when it is guaranteed.

PARTIAL LIST OF ARTICLES TO BE SOLD FOR ONE DOLLAR EACH.

Without regard to value, and not to be paid for until you know what you are to receive.

15 Elegant Rosewood Pianos worth from	$600 to $800
15 Elegant Melodeons, Rosewood Cases	125 to 200
50 First Class Sewing Machines	40 to 100
75 Fine Oil Paintings, Assorted	20 to 100
100 Fine Steel Engravings, Framed	20 to 50
75 Music Boxes	15 to 50
100 Rotobving Patent Gaslight, Silver	100 to 150
50 Silver Fruit and Cake Baskets	20 to 50
100 Sets of Tea and Table Spoons	20 to 50
150 Gold Hunting Case Watches, warranted	60 to 150
100 Diamond Rings, cluster and single stone	25 to 200
175 Gold Watches	65 to 150
175 Ladies' Watches	65 to 150
500 Silver Watches	20 to 50

Diamond Pins, Brooches and Ear Drops, Ladies' Sets of Gold and Coral, Jet and Gold, Opera Glasses, Lorgnettes, Sets of Studs, Vest and Pant Chains, Plain and Chased Gold Rings, Gold Bracelets, Lockets, New Style Belt Buckles, Gold Pens and Pencils, Fancy Work-Boxes, Gold Pens with Gold and Silver Extension Holders, and a large assortment of Fine Silver Ware and Jewelry of every description, of the best and latest styles.

☞ A chance to obtain any of the above Articles for ONE DOLLAR, by purchasing a sealed envelope for 25 cents.

☞ Five Sealed Envelopes will be sent for $1; Eleven for $2; Thirty for $5; Sixty-five for $10; One Hundred for $15.

Agents Wanted Everywhere.

Unqualified testimonials offered to Ladies and Gents who will act as such. Our descriptive circulars will be sent on application.

Distributions are made to the following manner: Certificates stating each articles and its value are placed in sealed envelopes, which are well mixed. One of these envelopes containing the Certificate or Order which will be delivered at our office, or sent by mail to any address, without regard to choice, on receipt of 25 cents.

On receiving the Certificate the purchaser will see what article is drawn and its value, and can then proceed to the place and receive the article named, or can choose any other one article on our list of the same value.

Purchasers of our Sealed Envelopes may, in this manner, obtain an article worth from one to five hundred dollars.

Persons forwarding Letters are requested to write the plain directions, and in closing different articles from those drawn, mention the style desired.

, Orders for SEALED ENVELOPES must in every case be accompanied with the cash, with the name of the person sending, and Town, County and State plainly written.

Letters should be addressed to the Managers, as follows:

SHERMAN, WATSON & CO.,
37 and 39 Nassau St., New York City.

OCEAN STEAMERS.

PACIFIC MAIL STEAMSHIP COMPANY'S THROUGH LINE TO CALIFORNIA.

Touching at Mexican Ports, and carrying the United States Mail.

Through in twenty-two days.

STEAMSHIPS OF THE ATLANTIC:	CONNECTING ON THE PACIFIC WITH THE
ARIZONA,	COLORADO.
HENRY CHAUNCEY,	CONSTITUTION.
NEW YORK,	GOLDEN CITY.
OCEAN QUEEN,	SACRAMENTO.
NORTHERN LIGHT,	GOLDEN AGE.
COSTA RICA,	MONTANA.

&c., &c.

ONE OF THE ABOVE LARGE AND splendid Steamships will leave Pier No. 42, North River, foot of Canal street, at 12 o'clock noon, on the 1st, 11th and 21st of every month, (except when these days fall on Sunday, and then on the preceding Saturday,) for ASPINWALL, connecting via Panama Railroad, with one of the Company's Steamships from Panama for SAN FRANCISCO touching at ACAPULCO.

Departures of the 1st and 21st connect at Panama with Steamers for SOUTH PACIFIC and CENTRAL AMERICAN PORTS. Those of 1st touch at MAZATLANILLO.

Departures of the 11th each month connect with the new steam line from Panama to AUSTRALIA and NEW ZEALAND.

Steamer of December 11th, 1866, will connect with the first steamer of the Company's China line, leaving Panama January 11, 1867, for YOKOHAMA and HONG KONG.

A discount of ONE QUARTER off from steamers rates allowed to second cabin and steerage passengers with families. Also, an allowance of ONE QUARTER on through rates to Oregon and California to all officers and enlisted soldiers having honorable discharges, HALF FARE.

One Hundred Pounds Baggage allowed each adult. Baggagemasters accompany baggage through, and attend to bedding and children with their mothers. Baggage forwarded on the dock the day before sailing, from steamboats, railroads and passengers who prefer to send down early.

An experienced surgeon on board. Medicine and attendance free.

For passage Tickets or further information, apply at the Company's ticket office on the Wharf, FOOT OF CANAL STREET, NORTH RIVER NEW YORK.

octl5-1m A. R. ROLMAN, Agent.

JEWELRY, &c.

NEW AND RICH JEWELRY.

G. H. SMITH HAS JUST RETURNED from New York with a new and elegant stock of Watches, Clocks, Silver and Silver Plated Goods, Spectacles, Gold Pens, Gold Chains, &c., &c.

All Goods warranted as represented.

sept28-1m GEO. H. SMITH.

CLOCKS! CLOCKS!!

EVERYBODY WANTS A CLOCK. Go to G. H. Smith's Jewelry Store and buy one of those new Clocks cheap. sept28-1m

SPECTACLES.

YOU WILL FIND A BETTER ASSORTMENT of Spectacles at Smith's Jewelry Store than anywhere in town. sept28-1m

IF YOU HAVE TETTER, SCALY Eruptions, Pimples or Blotches on the face, Ulcers, Rheuming Sores, or any disease arising from an impure state of the blood, go to Dr. PARKER'S Medical Store, and get a bottle of Oregon Constitutional Life Syrup.

HARDWARE.

W. W. WOODRUFF'S NEW HARDWARE STORE,

SIGN OF THE BLUE PLOW,

Centre Store, Coffin Block, Gay Street, KNOXVILLE, TENN.

HAS JUST OPENED A NEW STOCK OF HARDWARE, consisting of TABLE CUTLERY, POCKET CUTLERY, CARPENTERS' TOOLS, BLACKSMITHS' TOOLS, SADDLERS' TOOLS, SHOEMAKERS' TOOLS, STRAW CUTTERS, NAILS, AXES, LOCKS, HINGES, AGRICULTURAL IMPLEMENTS, &c.

HOUSE KEEPERS' EMPORIUM.

SILVER PLATED FORKS AND SPOONS.

Waiters, Basting Spoons, Dippers, Sieves, Brooms, Shaker, Tubs, Buckets, Washboards, Mops, Scrub-brushes, Whitewash Brushes, Shoe Brushes, Mason's Blacking, Stove Polish, &c., &c.

Also a choice selection of

TABLE CUTLERY, BRASS KETTLES, AND HOLLOW WARE.

ALL SIZES OF

WINDOW GLASS!!

7 by 9 to 18 by 24.

PUTTY! PUTTY!

Grain Scythes, Black Snake Grass Scythes, Dutch Grass Scythes, Patent Snaths and Cradles.

GALVANIZED

SHEET IRON,

for pans to make

SORGHUM MOLASSES & SUGAR.

HUBS, SHAFTS, FELLOES, SPOKES, AND

Band & Tire Iron.

COOPERS' HOOP IRON.

"BURDEN'S"

Horse and Mule Shoes

Can be furnished cheaper than you can buy iron to make them.

POWDER, CAPS, SHOT,

SHOT GUNS, RIFLES, PISTOLS AND FISHING TACKLE.

I am Agent for

DUPONT'S POWDER,

Which will be supplied to Merchants at

Actual Cost!!!

Orders by mail will receive prompt attention, and satisfaction guaranteed in all cases.

☞ Anybody sending a three cent postage stamp, will receive information how to make SORGHUM SUGAR from the cane raised in this country.

☞ Remember the place,

Centre Store, Coffin Block.

sept18-1m

GROCERIES AND COMMISSION.

DUFF LEWIS WITH SMALL, HOUSE & FITCH, DEALERS IN

General Merchandise,

Produce and Commission Merchants, First door North of Post Office, Gay St., KNOXVILLE, TENN.

Wm. A. Rogers, Pres't. Wm. M. Heiskell. Chas. W. Fiske. aug7tf

P. H. GRISHAM & CO., DEALERS IN Groceries, Produce and Notions, Gay Street, between Union and Asylum, KNOXVILLE, TENN.

Wheat Sugar, Coffee, Teas, Spices, Dye Stuffs, and general family supplies. sep19-6m

W. P. WILSON & CO., WHOLESALE GROCERS AND COMMISSION MERCHANTS, North-east Corner of Gay and Church Streets, (Coffin Block.)

BEG LEAVE TO INFORM THE PEOPLE of Knoxville, and East Tennessee generally, that they have just received a large and well assorted Stock of Seasonable Family Groceries, Liquors, Tobacco, Cigars, &c., which will be sold at greatly reduced prices. The best brands of Old Ohio Wheat Family Flour, constantly on hand. Country Merchants will find it to their interest to call and examine our stock and prices before purchasing elsewhere.