
Whitesides v. The People of the State of Illinois.

JAMES A. WHITESIDES AND OTHERS, Plaintiffs in Error, v. THE
PEOPLE OF THE STATE OF ILLINOIS, Defendants in Error.

ERROR TO POPE.

If an indictment does not aver the year to be the year of our Lord, and does not contain the words, "in the name and by the authority of the people of the state of Illinois," it is bad. (1)

In an indictment for a riot, the facts constituting a riot, should be clearly set forth.

Opinion of the Court. This was a criminal prosecution for a riot, against the plaintiffs in error. Three errors are assigned.

1. Uncertainty in the indictment, in not averring the year to be the year of our Lord.

2. The form prescribed by the constitution, in which criminal prosecutions shall be commenced, is not pursued.

3. There is not such a criminal offense alleged in the indictment, as will make the plaintiffs in error guilty of a riot, if committed.

On the first point, the law makes it necessary to have common certainty in every indictment, and nothing can be inferred to aid it. Without inference, the year could not be gathered from the indictment, and therefore it is defective. On the second point, when a constitution or act of the legislature, prescribes a certain form to be used in legal proceedings, it would seem that the court has no power to dispense with that form. Therefore, as the indictment does not pursue the form given in the constitution, that all indictments shall be carried on "in the name, and by the authority of the people of the state of Illinois," it is bad.

On the third point, the charge in the indictment is, that the defendants made a great noise and disturbance of the peace. This, the court considers too vague and uncertain. In criminal proceedings, the charge should be distinct and positive, and the way and manner in which the great noise and disturbance of the peace was made, should have been stated.

(1) An indictment or complaint which states the year of the commission of the offense in figures only, without prefixing the letters "A. D." is insufficient. *Commonwealth v. McLoon*, 5 Gray, (Massachusetts) Rep., 91. *State v. Lane*, 4 Ireland, 121.

In *State v. Hodgeden*, 3 Vermont Rep., 481, the time of the commission of the offense was stated as follows: "A. D. 1830," and was held to be sufficient. And similar was the case of *State v. Gilbert*, 13 Vermont Rep., 647.

In *Hall v. State*, 3 Georgia Rep., 18, the offense was charged to have been committed "In the year eighteen hundred and forty-six;" and the court said they

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For this omission, the indictment is also defective. The judgment of the court below must be reversed. (a)

Judgment reversed.

would presume that to mean "In the year of our Lord." The same was held by the Supreme Court of Indiana in *Engleman v. State*, 2 Carter, 91.

From the authorities we think an indictment which alleges an offense to have been committed "in the year," &c., would be held good, although the words "of our Lord," were omitted.

In *McFadden v. Fortier*, 20 Ill. Rep., 515, the court referred to the second proposition decided in the case of *Whitesides v. The People*, and approved of the decision in that case.

(a) In an indictment a day certain must be stated, so must also the year, otherwise the indictment will be insufficient, and (in England) the year of the king's reign is usually inserted; but the year of our Lord is equally unobjectionable. *Archbold's Crim. Pl.*, 11.

The criminal code of 1827, page 157, provides, that "All exceptions which go merely to the form of an indictment, shall be made before trial, and no motion in arrest of judgment, or writ of error shall be sustained, for any matter not affecting the real merits of the offense charged in the indictment."