

FLETCHER ET AL. vs. THE STATE.

An indictment for disturbing a religious congregation, charging that defendant "maliciously and contemptuously did disturb and disquiet a certain congregation assembled for religious worship," without alleging the manner of disturbance, is bad in substance, (*State vs. Minyard, ante*), and will not support a judgment on a plea of guilty.

By the plea of guilty, defendant but confesses himself guilty in manner and form as charged in the indictment, and if the indictment charges no offence against the law, none is confessed.

Writ of Error to Conway Circuit Court.

This was an indictment for disturbing a religious congregation, determined in the Conway Circuit Court, before the Hon. WM. H. FEILD, Judge, at the March term, 1850.

The indictment was, in substance, as follows:

"The grand jurors, &c., &c., present that Jacob Minyard, Clark Fletcher, Francis M. Hollyfield, and George Roberts, late of, &c., &c., on the 29th day of July, A. D. 1849, with force and arms, in the county aforesaid, maliciously and contemptuously did disturb and disquiet a certain congregation, assembled in the county

aforesaid for religious worship, contrary to the form of the statute," &c., &c.

Defendants Fletcher, Hollyfield, and Roberts severally pleaded guilty, and, on submission to the court, were fined \$20 each.

Fletcher and Hollyfield brought error.

WALKER & GREEN, for Plaintiffs.

CLENDENIN, *Att. Gen.*, contra, said that, even if the indictment is defective, the plaintiffs have waived all objection to it by the plea of guilty.

Mr. Justice SCOTT delivered the opinion of the Court.

The indictment in this case is liable to the same objection which we have sustained against that in the case of *The State vs. Minyard*, in the opinion just delivered. But the Attorney General submits, that, inasmuch as the defendants below pleaded guilty in the Circuit Court, they thereby waived all objections to the indictment. The law has been long settled otherwise. No confession, however large and explicit, can have any such effect. (1 *Chitty on Cr. Law*, page 431, 662-3.) The defendants here but confess themselves guilty in manner and form as charged against them in the indictment, and, if no other offence against the law is charged, they have not confessed themselves guilty of any. But if the confession was still broader and embraced a crime, when the indictment fell short of it, and punishment followed, it would be the punishment of a crime not proceeded for by indictment.

And in civil pleading, this principle is equally well settled in the doctrines touching the distinctions between stating no title or a defective title on the one hand, and stating a good title or cause of action defectively on the other.

The judgment of the Circuit Court in this case must be reversed, because no offence is charged in the indictment, and the cause must be remanded, that a new indictment may be preferred to the Grand Jury. *Dig.*, p. 403, *sec.* 104.