SLICKER *vs.* THE STATE.

The Legislature did not, by the use of the terms "*obstruct* or *resist*" the execution of process, in *sec.* 2, *art.* 4, *part* 7, *ch.* 51, *Digest*, intend to create two distinct and different offences, and hence an indictment charging that defendant did *obstruct and resist* the execution of process would not be double, and charging either obstruction or resistance would be good, the proof corresponding with the allegation.

In such indictment, it is not necessary to set out the process so as to show it to be valid, as on the trial, the State could not introduce invalid process as evidence, but it is sufficient to describe the process so as to identify it, and advise the defendant of what he is called upon to answer.

Writ of Error to Pope Circuit Court.

FOWLER, for the plaintiff.

CLENDENIN, *Att. Gen.*, contra.

Mr. Justice SCOTT delivered the opinion of the Court.

The plaintiff in error was convicted, under the provisions of the second section of the statute against obstructing process, &c., (*Digest, ch.* 51, *art.* 4, *p.* 359,) and fined fifty dollars. The indictment, in the usual form in other respects and containing but one count, exhibits the charge that the defendant below "knowingly and wilfully did obstruct and resist one James S. Sillman, who was then and there constable of Illinois township, in said county of Pope, in said State of Arkansas, in the attempt to serve a certain writ of execution, then and there in his hands, against him, the said George Slicker, contrary to the form of the statute in such cases made and provided," &c. After verdict of guilty, the defendant below appears to have filed a motion in arrest of judgment and for a new trial; but how this motion was disposed of, does not appear, otherwise than that final judgment

was rendered in accordance with the verdict of the jury. The cause was brought here by writ of error, and, after assignment of errors and joinder, was regularly argued and submitted.

Two objections are taken to the indictment: 1st. That it is double—charging two separate offences: 2d. That the writ, the service of which is charged to have been obstructed and resisted, is not sufficiently described to show that it was valid. And there is no other question raised.

As to the first, we think there is no probability that the legislature, in regulating the offence proceeded for in this case, had any intention to define two several offences predicated upon any distinction between the obstruction and resistance to the service of process; and therefore, whether the opposition or impediment contemplated by the law be manifested in an active or in a passive form, cannot be at all material. Doubtless an indictment charging appropriately obstruction without express resistance or *vice versa,* would be good; and the only consequence of charging both in express terms, would be the necessity for a corresponding quantum of proof which would, in general, be the same in either case. We think, therefore, that there is nothing in this objection; and no more in the other, because, under the allegation as to the writ of execution, it was not competent for the State to have produced in evidence any other than a valid writ upon its face corresponding with the description alleged, and these allegations sufficiently advised the defendant for what he was called upon to answer.

Finding no error in the record, the judgment must be affirmed with costs.