

COOPER vs. THE STATE.

An issue of fact, to a plea in abatement of an indictment, should be tried by a jury, and not by the court.

Appeal from Chicot Circuit Court.

Hon. JOHN C. MURRAY, Circuit Judge.

Garland & Randolph, for the appellant.

Hollowell, Attorney General, contra.

Mr. Justice COMPTON delivered the opinion of the Court.

This was an indictment for Sabbath breaking. The appellant pleaded in abatement, substantially as was pleaded in the case of Wilburn vs. The State, decided at the present term;

and upon the plea, an issue of fact was made up and submitted, for trial, to the court sitting a jury.

The court found the issue for the State, and rendered judgment against the appellant for fine and costs. This was error. The issue should have been tried by jury, as falling within the rule laid down by this court in *Wilson vs. The State*, 16 Ark. 601; *Bond vs. The State*, 17 Ark. 290.

