THE STATE *vs.* BARKMAN.

An indictment regular in all respects upon its face, must not be quashed; notwithstanding the statute, providing that the first found of two indictments for the same offence shall be quashed.

The statute but declares the effect of the pendency of two indictments for the same offence.

A party wishing to avail himself of the pendency of another indictment, or other matter dehors should do so by plea.

Writ of Error to the Circuit Court of Clark County.

INDICTMENT for mayhem—determined by Clendenin judge, in September 1845. The indictment was quashed upon motion of defendant; no defect or imperfection was pointed out, nor indeed was there any written motion made or filed. The indictment was entirely regular in all respects upon its face. The State brought error.

WATKINS, Att'y Gen'l, for the State.

RINGO & TRAPNALL, contra. By the 90th section of the Revised Statutes, chapter 45, it is provided that if there be two indictments for the same offence, pending at the same time, the indictment first found shall be quashed. In England indictments are sometimes quashed for causes not appearing on the face of the record. *Rex vs. Soater,* 2 *Starkie's N. P. cases* 423. *Fost.* 231. *Rex vs. Rockwood, Holt* 684. 2 *St. Tr.* 677.

Every act of a court of competent jurisdiction shall be presumed to be rightly done until the contrary is made to appear. *Woods, ex parte,* 3 *Ark. R.* 532.

In *Harper vs. Bell,* 2 *Bibb.* 222, a motion was made to quash an attachment, but the grounds of objection were not set forth; the motion was overruled; and although the attachment on its face was defective, yet the court presumed that it was made on intrinsic causes, and not on those which appeared on the face of the writ,

on the ground that when the court below may have acted correctly, the supreme court is bound to presume that it did so.

We see no defect on the face of the indictment and therefore it is to be presumed that it was quashed for matters of objection dehors the record.

JOHNSON, C. J. The defendant moved the court below to quash the indictment, which motion was sustained, and a final judgment rendered against the State. It is admitted by the defendant's counsel that there is no defect upon the face of the indictment; but it is contended that it might have been quashed for matter dehors the record, and that this court is bound to presume the fact as such presumption is necessary to support the judgment. We are free to admit that matter dehors may have existed which would, if properly presented to the court below, have operated to quash the indictment. "If there shall be at any time pending against the same defendant two indictments for the same offence or two indictments for the same matter, although charged as different offences, the indictment first found shall be deemed to be superseded by such second indictment and shall be quashed." This statute simply declares the effect of the pendency of another prosecution, but this would not authorize the court to take judicial notice of the fact. A party wishing to avail himself of the pendency of another indictment, or any other matter dehors the record would most unquestionably be required to bring such matter before the court by an appropriate plea. It certainly did not devolve upon the State to show any fact which was calculated to defeat the prosecution, and if the defendant did not choose to bring it upon the record, it raises a strong presumption that no such matter existed. We have examined the whole record critically, and have been unable to discover any ground upon which the motion could have been sustained.

Judgment reversed.