

BENEUX vs. THE STATE.

A defendant indicted by the name of Bennaux, pleaded in abatement, that he was known by the name of Beneux; *Held*, that the names were *idem sonans*.

Appeal from Franklin Circuit Court.

HON. JONAS M. TEBBETTS, Special Judge.

JESSE TURNER, for the appellant.

HOLLOWELL, Attorney General, for the appellee.

Mr. Justice COMPTON delivered the opinion of the Court. Appellant was indicted in the Franklin Circuit Court for selling ardent spirits contrary to the statute, etc.

He pleaded in abatement that he was indicted by the name of *Justin Bennaux*; whereas he was then, and had always been known by the name of *Justin Beneux*. The Court sustained a demurrer to the plea. Appellant stood mute, and a plea of not guilty being entered by order of the Court, he was convicted and fined.

Did the Court err in sustaining the demurrer? It is insisted by counsel that Beneux is a French name, and that, according to the rules of orthography and pronunciation in the French language, is widely different in sound from Bennaux. It may be replied, that however this might be to the ears and understanding of a Frenchman, the names would seem to be *idem sonans*, according to our language.

In *Rector vs. Taylor, Gardiner & Co.*, 7 Eng. 128, this Court

held that the names "Gardiner" and "Gardner," were not variant in sound, the letter "i" in the one name making no necessary difference in sound. In that case, the Court said: "So, we held 'Gravaier' and 'Gravier,' to be the same sound. The decisions have already gone as far as may be allowed in support of such technicalities, which do but tend to produce delay in the due administration of the law, and should rather be modified, than extended further."

In sustaining the demurrer, the Court did not err.

Judgment affirmed.
