

CASON VS. THE STATE.

An issue of fact, in a criminal proceeding, cannot be submitted to the court
—a jury must try all the issues of fact on indictments.

Appeal from Chicot Circuit Court.

Hon. JOHN C. MURRAY, Circuit Judge.

GARLAND & RANDOLPH, for the appellant, referred to *Cooper vs. State*, and *Wilburn vs. State*, 20 Ark.; *Buzzard vs. State*, 20 Ark. 106.

HOLLOWELL, Attorney General, contra.

Mr. Justice COMPTON, delivered the opinion of the Court.

This was an indictment for retailing spirituous liquors contrary to the statute. The appellant pleaded in abatement, and upon his plea an issue of fact was made up and submitted to the court for trial, sitting as a jury. The court found the issue for the State, and fined the appellant twenty-five dollars, for which, with costs, final judgment was rendered. This, according to the decision of this court in *Cooper vs. The State*, 21 Ark. 228, and the authorities there cited, was erroneous. The issue of fact should have been tried by jury, and not by the court. Let the judgment be reversed.