

## CALICO AND DRAKE vs. THE STATE.

Where defendants are jointly indicted, and do not ask to sever, in their pleadings, it is regular to assess separate fines, and render a judgment against them, jointly, for costs.

If they sever in their pleadings, the costs up to the time of severance only, should be taxed against them jointly.

THIS was an indictment for gaming, tried in the Madison Circuit Court, in May, 1842, before the Hon. JOSEPH M. HOGE, one of the Circuit Judges. Calico and Drake were indicted jointly, for betting with two other persons a glass of whiskey, of the value of fifty cents, at a game of cards, commonly called *three-up*. Joint plea, not guilty,

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and verdict of guilty, assessing the fine of *each* at \$10. Several judgments against each, for his fine, and a joint judgment against both for all costs. The defendants appealed.

The case was argued here by *D. Walker*, for the appellants, and *R. W. Johnson, Atto. Gen.*, contra.

*By the Court, LACY, J.* There is no error in the judgment, in this case. Calico and Drake were jointly indicted for gaming; they did not ask to sever, in their pleadings; the fine was assessed severally, and judgment rendered jointly, for cost. This the statute fully authorizes. If they had severed in their pleadings up to that time, it would have taxed them both, jointly, with the costs. Not having done so, they were, of course, jointly liable for the costs of the plaintiff below.

Judgment affirmed.

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