

HAYNEY vs. THE STATE.

Upon an indictment for assault and battery, on *Grimanda C. Saddler*, evidence of an assault and battery on *Grimalda C. Saddler* will not warrant a conviction. The names are not the same sound.

THIS was an indictment against John Hayney, for an assault and battery on *Grimanda C. Saddler*, tried in the Yell Circuit Court, in September, 1842, before the Hon. RICHARD C. S. BROWN, one of the circuit judges. Evidence of assault and battery on *Grimalda C. Saddler*. Verdict of guilty; and motion for new trial for variance between indictment and evidence overruled. Exceptions, and appeal.

The case was argued here by *Blackburn*, for the appellant, and *R. W. Johnson, Atty. Gen.*, contra.

By the Court, PASCHAL, J. It is certainly necessary that the name of the person assaulted be proved as laid in the indictment; otherwise, the variance is fatal. The names "*Grimanda*" and "*Grimalda*" have certainly not the same sound. Prosecutors are not to be held, as to names, to the correct orthography, but certainly the name in the indictment must be *idem sonans* with the true name. This is the rule universally laid down, in all works on the subject of criminal proceedings. The Circuit Court then, having, upon the evidence, found the party guilty, contrary to law, ought to have granted the new trial. Case remanded, with instructions to grant a new trial.