WEBB *vs.* THE STATE.

Where a person has an improvement on a 16th section of land, appropriated to the use of schools, but resides on a different section, it is a violation of the act of 18th Jan'y, 1843, for him to use the stone or timber on such school section, for any other purpose than for the use of his improvement thereon.

Appeal from the circuit court of Pope county.

THIS was an indictment against Merideth B. Webb, under the act of 18th January, 1843, for cutting and removing timber from a section of land appropriated to the use of schools, determined in the circuit court of Pope county, at the September term, 1844, before the Hon. R. C. S. BROWN, one of the circuit judges.

The indictment charged that the defendant, on the 10th Dec., 1843, unlawfully cut and removed ten oak trees from the 16th section of T. 9 N. of R. 20 W. situate in the county of Pope, and being for the use of schools.

The defendant pleaded not guilty. The case was submitted to a jury, who found him guilty, and assessed a fine of five dollars upon him, and the court rendered judgment accordingly. Pending the trial, the defendant took a bill of exceptions, from which it appears that—

On the trial the State proved that the defendant, in January, 1844, cut and hauled from the section of land, described in the indictment, one tree, and used it in the erection of a cotton press on a different section of land, upon which he resided. That Webb had an improvement on the section of land from which he took the timber, but did not use it about that improvement.

At the request of the attorney for the State, the court charged the jury as follows, to which the defendant excepted—

"That the cutting or removing of any timber, or stone, off the 16th section, by an individual residing on a different section, is a violation of the provisions of the act under which the indictment is found, provided he appropriate such timber to the improvement of a different section."

"That the cutting or removing of timber from off the 16th section, and appropriating of such timber to the erection of buildings, or making of improvements on a different section, not being one of the 16th sections for the use of schools, is a violation of the act."

The defendant moved the court to charge the jury as follows, which the court refused, and to which he excepted—

"That if, from the evidence, they believed that the defendant had an improvement on the 16th section, he might cut timber for his own use, and unless he cut timber for sale or speculation, the jury should acquit."

The defendant appealed to this court.

LINTON & BATSON, for appellant.

WATKINS, *Att'y Gen.*, contra.

OLDHAM, J., delivered the opinion of the court.

The act of January 18, 1843, contains a reservation in favor of

two classes of persons; *first*, those who reside upon such sixteenth sections, who may use the timber or stone on said lands for their use generally; and *secondly*, such persons as have improvements on the sixteenth sections, who may use the timber or stone for the benefit of such improvements, but such persons are prohibited from cutting and removing timber or stone for the purpose of speculation or sale.

Webb belongs to the second class in whose favor the reservation is thus made. He has an improvement on the school lands, but resides on a different section, and is therefore authorized to use the timber, and stone, on the sixteenth section only for the benefit of his improvement on such section, and an appropriation of the timber or stone for any other purpose is as much a violation of the law as if he had no such improvement. Any other construction would in a great degree render the act nugatory, and would to a considerable extent defeat the object which the legislature had in view, in passing the law in question, which was to preserve from trespass and waste those lands granted by congress for the use of schools, and the education of the rising generation. Were such a construction not given to the act, persons living near a sixteenth section, and having a small improvement thereon, might enclose large farms and erect extensive buildings on their own lands, and keep them in repair with the timber and stone taken from the school lands. Such a privilege was never designed, or reserved by the legislature. The circuit court, therefore, did not err in refusing the instructions asked for by the defendant, nor in giving those asked for on the part of the State. Affirmed.