

RECTOR *vs.* THE STATE.

The Legislature have power to confer jurisdiction upon corporation courts, over all criminal offences less than felony, but it must be done in strict conformity to the constitution.

A crime or misdemeanor is an act committed, or omitted, in violation of public law, either forbidding or commanding it.

An assault and battery is a criminal offence within the meaning of the 14th section of the Declaration of Rights, and cannot be punished without presentment or indictment.

The act of 1840, conferring jurisdiction upon the city court of Little Rock, over assaults and batteries, without presentment or indictment, is in violation of the 14th section of the Dec. of Rights, and therefore void.

A conviction for an assault and battery, by that court; under the act of 1840, is *coram non judice*, absolutely void, and constitutes no bar to a prosecution, in the circuit court, for the same offence.

*Writ of error to the circuit court of Pulaski county.*

THIS was an indictment against Henry M. Rector, for an assault and battery, determined in the circuit court of Pulaski county, at the May term, 1844, before the Hon. J. J. CLENDENIN, judge.

The indictment charged an assault and battery, by Rector, upon L. J. Reardon, in Pulaski county, on the — day of May, 1843.

The defendant pleaded a former trial and conviction for the same offence, as follows:

“The defendant comes, &c., and says this court ought not to take cognizance of said cause, because he says, that by a certain act of the General Assembly of Arkansas, entitled, “an act to extend the powers of the mayor and aldermen of the city of Little Rock,” approved 21st December, 1840, each of the city justices, elected for the city of Little Rock as there provided by law, should specially, or together, have jurisdiction, as a corporation court, to hear, try, and determine, among other things, *assaults* and *batteries*, or assaults alone, committed within the corporate limits of said city of Little Rock, which said power, so as aforesaid given, is in no wise repealed, abolished or taken away: and that said offence mentioned in said indictment, was committed by the said defend-

ant long after the passage of said act and within the corporate limits of said city of Little Rock: and that he the said defendant, before the finding of said bill of indictment, was tried, in and before said corporation court, for said offence, and was found guilty, and punished therefor by sentence of fine, which sentence said defendant, before the finding of said bill, fully complied with, and this he is ready to verify, wherefore," &c.—Usual conclusion. The plea was sworn to.

The State demurred to the plea, and assigned as causes of demurrer: "1st, that said city justices, as a corporation court or otherwise, had no authority to hear, try, determine, acquit or convict said defendant of the offence whereof he now stands indicted, and said alleged conviction is wholly illegal and void: 2d, that there is and can be no record of said conviction."

The court sustained the demurrer, and the defendant refusing to plead further, the plea of not guilty was entered for him, by order of the court, under the statute. The case was then submitted to the court, sitting as a jury, and the court found the defendant guilty, and gave judgment accordingly.

The defendant brought the case to this court, by writ of error, and assigns as error, the judgment on the demurrer.

HEMPSTEAD & JOHNSON, for the plaintiff. The act of 1840, conferring additional power on the corporation of Little Rock, constituted the city justices a *corporation court*, and among other things authorized the hearing, trial and determination, of all assaults and batteries and assaults alone, committed within the corporate limits of the city, allowing trial by jury, appeals to the circuit court, and prohibiting the imposition of a greater fine than one hundred dollars, and more than one month's imprisonment. Under this law, Rector was tried, fined, and paid the fine. The right of the legislature to confer this jurisdiction, cannot be questioned. Const. sec. 1, art. 6. *Slattery Ex parte*, 3 Ark. Rep. 484. *Frail Ex parte*, id. 561. *Acts of 1840*, page 42.

The plea substantially states, a *former conviction* for the same identical offence, by a court of competent jurisdiction, and on set-

tled principles of law, operated as a complete bar to this second prosecution. 4 *Co. Rep.* 40. *Hawkins P. C. b. 2, ch. 36, s. 1.* 4 *Bl. Com.* 336. 1 *Chit. C. L.* 462. 2 *Hale P. C.* 251.

WATKINS, ATT'Y GEN., *contra.* It is provided by the 14th sec. of the bill of rights that "no man shall be put to answer any criminal charge but by presentment, indictment or impeachment." By the act of 21st Dec., 1840, (*Ph. acts, p. 42,*) under which the defendant claims to have been convicted, the corporation court is authorized, among other things, to try, hear and determine assaults and batttery "without the necessity of indictment or presentment." Is this a criminal offense? if it is, it follows that the act referred to is a law in violation of the constitution. This question is settled in the case of *Slattery Ex parte, 3 Ark. Rep.* 484, in which it was held that the corporation court under the act of 1840, could punish a person for using obscene language in the street, because that offence was not declared to be criminal by any statute of this State. But the offence for which Rector is indicted is declared criminal by statute.

JOHNSON, C. J., delivered the opinion of the court.

The only question presented by the record in this case, is, whether the circuit court erred in sustaining the demurrer, interposed by the State, to the plea of the plaintiff in error? It was ruled by this court, in the case of *Slattery, Ex parte, 3 Ark. Rep.* 485, that the General Assembly may, if they deem it necessary, vest in a corporation court the jurisdiction of all crimes less than felony at the common law. The city of Little Rock was incorporated in 1835. On the 21st of December, 1840, the General Assembly enacted that each of the city justices, elected for the city of Little Rock, as now provided by law, shall, separately or together, have jurisdiction as a corporation court, to hear, try and determine certain enumerated offences, among which are assaults and batteries, without the necessity of indictment or presentment. The fourteenth section of the second article of the constitution, declares that no man shall be put to answer any criminal charge but by

presentment, indictment or impeachment. Under this clause of the constitution, it becomes necessary to determine whether the matter charged against the plaintiff in error amounts to a criminal offence or not? For if it be a criminal charge; then it is manifest that the Legislature, though authorized to confer the jurisdiction, could not do so without the necessity of indictment or presentment. A crime or misdemeanor is defined to be "an act committed, or omitted, in violation of a public law, either forbidding or commanding it." This general definition comprehends both crimes and misdemeanors, which properly speaking are mere synonymous terms, though in common usage, the word "crime" is made to denote such offences as are of a deeper and more atrocious dye, while smaller faults, and omissions of less consequence, are comprised under the gentler name of misdemeanors only. It certainly cannot require an argument to prove that an assault and battery is a criminal offence. The statute is express that every person guilty of an assault and battery shall, on conviction thereof, be fined in any sum not less than ten, nor more than two hundred dollars. The act, therefore, which is charged against the plaintiff, was committed, if at all, in violation of a public law, that expressly forbids it. We entertain no doubt of the power of the legislature to confer jurisdiction upon corporation courts, over all criminal cases less than felony at the common law, yet in order to exercise that power, it is necessary that it should be done by an act in strict conformity to the constitution. The act of 1840, conferring jurisdiction upon the city court of Little Rock in assaults and batteries, so far from conforming to that instrument, is clearly repugnant to it. The one expressly requires either a presentment or indictment, and the other as expressly dispenses with the necessity of both. It is therefore manifest that the act, so far as it attempts to confer jurisdiction upon the city court of Little Rock, in cases of assault and battery, is a direct and palpable violation of the constitution, and therefore absolutely void. Such being our view of the act set up in the plea, we are clearly of opinion that the trial in the city court was *coram non iudice* and void, and that,

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consequently, it can afford no bar to the present indictment. We are therefore of opinion that there is no error in the judgment of the circuit court in sustaining the demurrer.

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