

DURR vs. HOWARD.

An assault and battery is a criminal offence within the meaning of the 14th sec. II article, Const. Ark. and cannot be punished without presentment or indictment—as held in *Rector vs. the State*, ante 187. The Mayor of Little Rock fined D. for an assault and battery (without presentment or indictment,) and ordered him into the custody of the city constable until the fine and costs were paid: D. paid them, and brought an action against the constable to recover back the money. Held that the judgment of the Mayor was void, and conferred no legal authority on the constable to enforce it.

Writ of error to the circuit court of Pulaski county.

THIS was a suit by David Durr against Isaac J. Howard, for

money had and received by the defendant for the plaintiff's use, commenced before a Justice of the Peace of Pulaski county. The justice determined the case against Durr; he appealed to the circuit court, and the cause was tried before the Hon. J. J. CLENDENIN, at the April term, 1845.

The parties submitted the case to the court, sitting as a jury, upon an agreed state of facts, and the court found in favor of, and rendered judgment for the defendant. The counsel of Durr moved for a new trial, and in arrest of judgment, upon the ground that the finding and judgment were contrary to law. The court overruled the motion, he excepted, and took a bill of exceptions, sitting out the evidence as embraced in the agreed statement by the parties; which in substance follows:

In April, 1843, the defendant, Howard, as constable of the city of Little Rock, had in his custody one Henry Fischer, under process from the mayor of the city. The plaintiff, Durr, laid violent hands upon Howard, with intent to rescue and release Fischer from his custody. For which he was taken before the Mayor of the city, upon a warrant issued by the Mayor, and fined \$75, for said offence, with \$14 costs, and ordered into the custody of Howard until the fine and costs were paid. On the payment thereof, he was released from custody, and Howard paid the money over to the city. The suit was brought by Durr to recover of Howard the amount of the fine and costs so paid by him.—Durr brought error.

BLACKBURN, for the plaintiff.

CUMMINS, contra.

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

The question presented is, did the circuit court err in refusing a new trial? The record discloses a case in which the Mayor of the city of Little Rock, tried and determined a criminal charge, and that without the formality of a presentment, indictment or impeachment. The fourteenth section of the second article of the constitution declares that no man shall be put to answer any crim-

inal charge but by presentment, indictment or impeachment It certainly cannot require either argument or authority to prove that an assault and battery is a criminal offence. This is the only point really involved, and the law as ruled in the case of Rector vs. The State, *ante* 187, is clear and conclusive. The judgment rendered by the Mayor against the plaintiff is clearly void, and consequently the constable had no legal authority to enforce it. Upon the state of facts as agreed by the parties, and incorporated in the bill of exceptions, it is clear that the circuit court decided contrary to law, and that, therefore, the judgment ought to be reversed.

Judgment reversed.

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