

MAYERS vs. THE STATE.

Under the act of 1845, relative to billiard tables, the setting up and keeping of a billiard table is no offence.

The act provides that before the table shall be set up, the sum of twenty-five dollars shall be paid into the State Treasury, and a like sum into the County Treasury; and any person setting up the device and thus refusing to pay, is guilty, &c.

The essence of the crime is, that the party should have refused to pay the tax imposed; and unless this be charged, the indictment is void.

Appeal from the Crawford Circuit Court.

This was an indictment found in Crawford Circuit Court, and determined before the Hon. R. C. S. BROWN, one of the Circuit Judges, in August, 1845. The indictment charged Henry and Michael Mayers, with requisite certainty of time and place, that they "did unlawfully set up and keep a certain billiard table," and "did suffer and procure divers idle persons to play together at and upon said billiard table, a certain unlawful game called billiards, against the peace and dignity of the State of Arkansas." There was a mo-

tion to quash, because no offence known to the law was charged. This was overruled, and a trial had on the plea of not guilty, upon which a verdict was rendered against the defendants, who excepted and spread out the evidence. It was proven that the defendants set up and kept a billiard table upon which divers persons played. The defendants then offered to produce the certificates of the treasurers of the State and Crawford county, of the payment of the sums required by the act of 1845, but the court refused to hear or receive them as evidence: and the defendants excepted, and appealed to this court.

W. WALKER, for appellants.

WATKINS, Atto. Genl., contra.

JOHNSON, C. J. The indictment in this case was preferred subsequent to the passage of the act of 1845, and consequently, after the repeal of that of 1843. The first named act, after repealing the third section of the last, declares that it shall not be lawful for any person or persons to set up and keep a billiard table, or ten-pin alley, without first paying into the State treasury twenty-five dollars, and twenty-five dollars into the county treasury, in which said table or alley may be set up; and further, that if any person or persons, setting up or keeping a billiard table, or ten-pin alley, refuse to pay the license, they shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than fifty, nor more than one hundred dollars. It is obvious, at the first blush, that the mere fact of setting up and keeping a billiard table, is not of itself an offence under this statute; but it is also of the essence of the crime, that the party charged has refused to pay the several sums specified in the act. If this construction be correct, and that it is we do not entertain a doubt, it is then perfectly manifest that the indictment exhibits no offence known to the law. That the defendants had refused to pay the several sums specified as a tax for the privilege of setting up and keeping the table, was absolutely essential to consummate the offence, and consequently should have been alleged in the indictment. It is contended by the appellants that the act of 1845,

upon which it is supposed this indictment was framed, is unconstitutional and void. Upon that point we do not deem it necessary or even proper to express an opinion, as there is an entire failure to show any offence whatever. Under this view of the act, it is clear that the indictment is a mere nullity, and that no valid judgment could be pronounced upon it. The judgment of the Circuit Court must, therefore, be reversed.
