

THE STATE vs. ROBERT BROWN.

It is not necessary that a prosecutor should be endorsed upon an indictment for a trespass upon a sixteenth Section.

The design of Sec. 87, Chap. 52, Digest, was to require the prosecutor to endorse his name only in cases where the indictment is found upon the testimony of the party injured. The object being to prevent frivolous and vexatious prosecutions, by taxing the prosecutor with costs on failure to convict.

A Sixteenth Section being public property, is not the "property of another" within the meaning of said Section.

Writ of Error to Perry Circuit Court.

Robert Brown was indicted in the Circuit Court of Perry coun-

ty, from cutting and removing timber from a Sixteenth Section of land, appropriated to the use of Common Schools. At the October Term, 1848, on motion of defendant's counsel, the indictment was quashed, by the Hon. WM. H. FIELD, Judge, because no prosecutor was endorsed thereon; and the State brought error.

The transcript returned upon the writ of error commences thus:
 "State of Arkansas. }
 County of Perry. } *to wit:*

In the Circuit Court of Perry county, at the April Term thereof, A. D. 1848."

Then follows the indictment, which is endorsed by the Clerk: "Returned and filed April 11th, 1848." Then follows the usual caption of the October Term of the Court, 1848, the motion to quash, judgment of the Court and bill of exceptions.

WATKINS, Att'y Gen'l. As the trespass laid in the indictment was committed upon lands granted to the State, this case does not come within the letter or spirit of *Sec. 87, Ch. 52, Dig.*

E. H. ENGLISH, *contra.* The Court properly quashed the indictment for the following reasons:

1st. It does not appear from the transcript that any Court was in session when the indictment was found. It purports on its face to have been preferred in *April*, 1848, but there is no caption in the transcript except of the *October Term*, 1848.

2d. The indictment is for a trespass on a 16th Section, under the act of Jan., 1843, *Digest, p. 344*, and no prosecutor is endorsed. No indictment for any trespass on the person or *property of another*, not amounting to felony, shall be preferred, unless the name of the prosecutor is endorsed thereon, except it is found on the information of a Grand Juror, public officer, or the testimony of a witness other than the party injured, in which case a statement of the fact shall be made at the end of the indictment, and signed by the Attorney for the State. *Digest, p. 400, Sec. 87.*— Here no such fact is stated, and yet no prosecutor endorsed.— The object of the act was to prevent the getting up of indictments

for petty offences, whereby the Courts would be vexed, and counties taxed with costs to gratify private revenge. If a man would prosecute another for a misdemeanor, he must be endorsed as prosecutor, and thereby become liable for costs. But least this should prevent the punishment of crime, by deterring persons from becoming prosecutors, who had been injured, the act provides further that a prosecutor may be dispensed with, if the indictment be found on the information of a juror, officer, or disinterested witness, which fact must appear at the end of the indictment; for the law-makers presumed that such persons would have no motive to institute frivolous prosecutions. But here the indictment may have been instituted by, and found upon the testimony of an enemy of defendant to harrass him, and yet his name does not appear as prosecutor that he may be taxed with costs on failure to convict at the discretion of the Court.

Is this a trespass less than felony on the property of *another*? It will not be disputed that the indictment charges a *trespass* less than *felony* upon *property*, but is a 16th Section the property of *another*, within the meaning of the Statute?—another *person* of course is meant.

The title to the 16th Section is in the State or in the people of the township. *Digest*, p. 81—p. 919, *et seqr.* If in the State, it is a person in contemplation of law—having a corporate existence—and is embraced in the term *another person* as used in the above act. *Digest*, p. 959. If the title is in the people of the township, the term “*another*,” though in the *singular*, embraces a *plurality* of persons. *Digest*, p. 959-60. So the indictment is bad for want of a prosecutor endorsed, and was properly quashed.

MR. JUSTICE SCOTT delivered the opinion of the court.

The first objection, founded as it manifestly is, upon a mere informal transposition in the transcript merely of the recorded proceedings in the Court below, is not well taken. The other objection better deserves notice. And as to this we think it clear that it was the intention of the Legislature in providing by the 87th Sec. of Chap. 52, of the Digest, that the name of the prose-

cuter shall be endorsed by himself upon indictments for trespass on persons or property, to require this to be done only in cases where the indictment was upon the information or testimony of a party injured by the alleged trespass. And the object of the Legislature, as is plainly indicated by the two succeeding Sections of the act, was to discourage frivolous prosecutions that might be gotten up for the mere gratification of vindictive feelings, by taxing the prosecutor with costs, whenever such prosecutions might prove fruitless.

When a prosecution for a trespass on person or property is upon the complaint or testimony of some person other than the party injured, there is no just ground for any suspicion that improper private feelings may have prompted the prosecution; nor any such when the trespass is upon public property. It would seem, therefore, that although the State, in her corporate capacity, may be included with the general term of "person," a trespass on the property of the State could not be within the provision of the Statute, being clearly without its reason; and that only natural persons and their property, and at most private corporations and their property can be included.

Although the Sixteenth Sections are held by the State in trust, not for the people of the State at large, but for the people of the particular townships in which they are situated, they are not the less public property within the meaning of the Statute.

We are of the opinion, therefore, that the Circuit Court erred in quashing the indictment in this case, and the judgment must be reversed, and the cause remanded.