

STATE VS. LONON ET AL.

Two persons may commit an assault and battery, each upon the other, at the same time, but each would be guilty of a distinct and several offence, and if severally charged, may be joined in the same indictment—but the Court has the discretion to quash the indictment.

Appeal from Lawrence Circuit Court.

Hon. WILLIAM C. BEVINS, Circuit Judge.

Mr. Attorney General JOHNSON for the State.

Mr. Chief Justice ENGLISH delivered the opinion of the Court.

John Burchfield and John J. Lonon were jointly indicted for an assault and battery, in the Lawrence Circuit Court, as follows:

“That John Burchfield and John J. Lonon, late of, etc., on the 10th day of June, A. D., 1853, with force and arms, in the county of Lawrence aforesaid, in and upon *each* other, in the peace of God in said State, then and there being, unlawfully did make an assault, and each other then and there did beat, wound and ill-treat, and other wrongs to each other then and there did, to the great damage of each other, contrary to the form of the statute,” etc.

Lonon filed a motion to quash the indictment for misjoinder, which the Court sustained, and the State appealed.

Two persons may commit an assault and battery, each upon the other, at the same time, as for example, when they mutually fight by agreement in a private place, but each would be guilty of a distinct and several offence. But the offences being mis-

demeanors, and of the same nature, the offenders may, it seems, be joined in the same indictment, if severally charged. But it is not proper to do so, because the Court has the discretion to quash the indictment, as it did in this case. *State vs. Nail et al.*, present term.

The judgment is affirmed.
