

OMEY VS. THE STATE.

In an indictment for selling ardent spirits to a slave, without permission, it is necessary to state the name of the master, and allege the sale to have been without the permission of the mistress, overseer or person having charge of him, as well as of the master.

Appeal from Franklin Circuit Court.

HON. J. J. GREEN, Circuit Judge.

STILLWELL & WOODRUFF and THOMASON, for appellant:

HOLLOWELL for the State.

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

Omey was indicted for selling ardent spirits to a slave.

There were three counts in the indictment. The *first* and *third* charged the defendant with selling ardent spirits to *Charles*, a slave, without permission of the master, mistress, overseer, or person having charge of said negro, but did not allege the name of the owner of the slave, etc.

The second count alleged that the negro belonged to Thomas Aldridge, and that the defendant sold ardent spirits to the negro without permission of his master, but does not negative the permission of the mistress, overseer, etc.

The defendant moved to quash the indictment, the motion was overruled, the plea of not guilty was entered for him by the court, and he was tried and convicted.

The first and third counts in the indictment were defective in

not alleging the name of the owner of the slave. *State vs. Cadle*, 19 Ark. 613.

The statute provides that no person shall sell, or cause to be sold, to any negro or mulatto slave, ardent spirits in any quantity, without permission of the master, mistress, overseer, or person having charge of said negro or mulatto slave; and any white person offending against the provision of this act shall be guilty of a misdemeanor," etc.

It does not make out the offence under the statute to charge that the ardent spirits were sold to the slave without permission of the master, for the permission may be given by the mistress, overseer, or person having charge of the negro; and it is more consistent with the rules of criminal pleading for the indictment to negative the permission of all of the persons who are designated in the statute as authorized to give it. See *Bone vs. State*, 18 Ark. 109.

The judgment must be reversed, and the cause remanded, with instructions to sustain the motion to quash the indictment.
