

Term, 1867.]

Harper v. The State.

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On a trial for larceny, the record states that the jury "were sworn and impaneled, and took their places in the jury box;" *held*, that the manner of swearing the jury was erroneous.

Appeal from Sebastian Circuit Court.

HON. A. N. HARGROVE, Circuit Judge.

CLENDENIN, J.

Thomas Harper was indicted in the circuit court of Sebastian county for the crime of larceny; was tried by a jury and found guilty; he moved in arrest of judgment and for a new trial, and the motion being overruled, he excepted to the opinion and judgment of the circuit court, and appealed.

The only question raised by the record in this case, is as to the manner of swearing the jury. The transcript of the record before us says, the jury "were sworn and impaneled, and took their place in the jury box." This manner of swearing a jury is clearly erroneous. This court, in the case of *Patterson v. The State*, 7 Ark., 59, have indicated the form of oath to be administered to juries in criminal cases, and that form should be complied with. In the case of *Bell v. The State*, 10 Ark., 540, this court also say: "The record shows that the jury were sworn only 'to try the issue joined.' This was irregular. They should also have been sworn to give a true verdict according to law and evidence. Had it been stated on the record that the jury were duly or regularly sworn, we would have presumed that the oath had been properly administered." See, also, the cases of *Sanford v. The State*, 11 Ark., 328, and *Bivens v. The State*, 11 Ark., 455.

For the error indicated in the manner of swearing the jury, in this case, the case must be reversed and remanded to the circuit court, with directions to that court to grant the appellant a new trial.
