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Term, 1869.]

McQuistian v. State.

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MCQUISTIAN *v.* STATE.

PROOF OF VENUE. Where, upon appeal to this court, the record in a criminal case shows that the *venue* was not proven on the trial below, this court will reverse the judgment of conviction.

*Appeal from Benton Circuit Court.*

Hon. E. D. HAM, Circuit Judge.

WALKER & CULLOM, for appellant.

MONTGOMERY, Attorney General, for appellee.

WILSHIRE, C. J.

At the March term of the Benton county circuit court, James McQuistian was convicted and sentenced to imprisonment in the penitentiary for three years, upon an indictment for an assault with intent to commit a rape. The defendant moved the court below for a new trial, which motion the court overruled. The defendant excepted to the ruling of the court, and appealed to this court.

The motion of the defendant, in the court below, and the grounds upon which it was made for a new trial, does not appear in the transcript of the record. There appears only the statement that the motion was made. But, upon an examination of the whole record, we find, from the evidence brought up by the bill of exceptions, that the venue was not proven, and, for this error of the proceedings in the court below, the judgment is reversed, and the cause remanded for further proceedings.

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