
Buckingham vs. The State.

BUCKINGHAM VS. THE STATE.

CRIMINAL LAW: *Burden of Proof.*

When the defendant admits the allegations of the indictment, he must, in order to exonerate himself, show such facts as amount to a justification or excuse.

Buckingham vs. The State.

APPEAL from *Lee* Circuit Court.

Hon. J. N. CYPERT, Circuit Judge.

Attorney General, for the State.

HARRISON, J.:

The appellant was indicted for failing, as road-overseer, to keep the roads in his district in good repair, and he was convicted and fined \$5. He filed a motion for a new trial, upon the ground that the evidence was not sufficient to warrant the conviction, which was overruled; and the question thus raised, is the only one for our consideration.

The indictment charged the offense in general words, following those of the statute.

Upon the trial, the appointment of the defendant, his acceptance of the same, and the failure to keep the roads in good repair, were admitted by the defendant; and on the part of the State it was admitted, that a part of the road had been changed by the County Court, and the new way, which ran on the section line and through the swamp had never been opened, and that it could be ascertained only by a survey, which the County Court had ordered the county surveyor to make, but which had never been done.

The State having by the admission of the defendant proved, that the roads in his district, had not been kept in repair by him: to exonerate himself, it devolved upon him to show, that they were not out of repair through any fault or negligence of his. This he did not do by showing that a part of the road had been changed, and the new way had never been opened, because the surveyor had failed to make the survey ordered by the County Court. If the want of repairs was only on the part of the road that had been changed, he should have shown that fact, either by witnesses or restricting his admission, that he had not kept the roads in repair, to such part. Judgment affirmed.