

CASES DETERMINED
IN THE
SUPREME COURT
OF THE
STATE OF ARKANSAS,
AT THE
MAY TERM, 1890.

STATE V. R. S. SMITH.

Decided May 31, 1890.

Justice of the peace—Non-feasance—Failure to file abstract of misdemeanors.

A justice of the peace is not indictable, under section 1755, Mansfield's Digest, for failure to file an abstract of misdemeanors tried before him, if he has tried none.

ERROR to *Drew* Circuit Court.

CARROLL D. WOOD, Judge.

Appellant, a justice of the peace, was indicted for failure to file with the clerk of the county an abstract of misdemeanors tried before him, as required by section 1755 of Mansfield's Digest. He was tried before the court, sitting as a jury, upon an agreed statement of facts, which showed that he had filed no abstract because no cases had been tried

before him since his last abstract was filed. He was acquitted, and the State appealed.

Section 1755, Mansfield's Digest, provides:

"It shall be the duty of each justice of the peace in this State to file an abstract of all the misdemeanors tried before him with the clerk of his county, on or before the first day of the succeeding term of the circuit court, giving the style of the case, the nature of the offense, how he obtained jurisdiction of the case, whether the defendant was acquitted or convicted, and, if convicted, the amount of fine or punishment imposed."

W. E. Atkinson, Attorney General, and *T. D. Crawford* for appellant.

The duty to file an abstract is not made dependent on the fact that cases have been tried.

Under our constitution justices have concurrent jurisdiction with the circuit courts over misdemeanors. Art. 7, sec. 40. The intention of the legislature was to advise circuit courts what misdemeanors had been tried by justices, to prevent clash of jurisdiction.

When the intent of the legislature is seen, the court has no alternative but to carry it into effect. 37 Ark., 495. The innocence of intention of defendant is no defense. 37 Ark., 431.

As to rule of construction, see Endlich, Int. St., sec. 337

PER CURIAM. Section 1755, under which the appellee was indicted, requires a report of misdemeanors tried. The courts can demand no more. If none were tried, no report is demanded. The judgment is right.

Affirm.