

To Peterson County Circuit Court
Case File - Criminal
May 1862

Box

21

Folio 15

State
vs

Smith, Abraham H.

Unknown

File contains only bill of exceptions
and defendant's motion to quash
indictment

56 St. Marks page 808

The State of Missouri } No 233
vs }
Abraham W Smith

The Defendant ~~Alleges~~^{now} ~~in~~^{quest} the
Judgment: ~~in this that the~~ allegations
made in said Judgment do not constitute
on the ground that the matters stated
in said Judgment do not constitute
an offence:

It is charged that the Defendant
in pursuance of an Agreement (not charged to
have been corruptly made) with Jth
Beckett & others fail to prosecute on In-
dictment against said ^{Beckett} on the 3^d day of May
1867.

It is not an offence for a Circuit
Attorney to contract & agree with a Defendant
under Judgment that he will move or
prosecute the Judgment against him
on a certain day - to wit on the 3^d day of May
1867.

The Circuit Attorney has a discretionary
power as to what day he will move or
prosecute an Indictment.

He may agree to continue a case with
a Defendant & unless that Agreement be
corruptly made it is no offence

The charge in this Indictment
that he then and there knowingly, will-
fully, unlawfully, corruptly, fraudulently
and on purpose ~~in~~ in pursuing said
agreement failed to prosecute on that
day - amounts to nothing at least not to
an offense -

To the contrary had he failed to
carry out the agreement with Defendant
not charged to have been corruptly made
He would have been liable to an
Indictment under Sec 16 p 808 for
willful & malicious oppression & abuse
of authority.

In carrying out an agreement made
in good faith for any act that appears
in this Indictment the Defendant was
but discharging a duty devolving upon
him & deserves commutation instead of
Indictment

The motion should be sustained
by J. Van Allen

Atty for Deft
Prose Mr

Filed May 11th 68
E. H. Carey Clk

Page 808, 809 & 810

Mr L B B

State

vs

J. W. Smith

Motion to Quash Indictment

J. J. Van Allen
for Deft

State of
Mo

J. H. Smith

Indict for
misadventure

No 233

Be it remembered that Luis
Carras Carrings are to be heard on
a motion to quash the indictment
which motion in regard follow
ing to wit (Check here copy) and
which motion having been seen
heard and examined the said
court doth overrule the same
and to the decision and action
of the said court in overruling
said motion the defect the
and then excepted for the reasons
on said motion filed and then
upone binds to said court the
following bill of exceptions
and perhaps the court to sign
and the same and make them
a part of the record in said
cause which is accord-
ingly done

Witness our hand and seal
the day and date of aforesaid
J. H. Vail Judge

No 233

Storia
by
Dunster

Ball of rap
ions

Filed May 12th 1868
E. P. Kiley Cl'