

TENNESSEE SUPREME COURT

State v. Watkins

23 Tenn. 256 (1843) · Decided December 15, 1843

OPINION

TURLEY, J.

Turley, J. delivered the opinion of the court. This is an indictment against the defendant in error for forcibly taking and carrying away out of the field and possession of one Beverly B. Loon, a negro slave, Allen, the property of said Loon.

The Circuit Judge quashed the bill of indictment upon the ground that no indictable offence was charged; and the question for our consideration is, whether the allegation that the negro was taken from the field and possession of his master is a legal allegation of a breach of the peace; and we hold that it is not, upon the authority of the case of *The State vs. Farnsworth*, 10 Yerger, 261, and the case of *The State vs. James R. Love*, 2 Devereux & Battle's North Carolina Law Reports..

In the case of *The State vs. Farnsworth*, this court held that an indictment charging that the defendant, with force and arms, one chesnut sorrel mare, the property of-John A. Park, did unlawfully and forcibly take from and out of the possession of the said John A. Park, was not good, because it contained no allegation of a breach of the peace, but merely a trespass.

We know no reason the principle should be differently applied to one species of property and another, a horse or a negro. In the case of *The State vs. James Love*, the Supreme Court of North Carolina held, that an indictment for forcible trespass to chattels, must charge the trespass to have been committed in *258the presence of the owner, and the taking to have been from his actual possession.

This the present bill of indictment does not. We therefore think the Circuit Judge committed no error in quashing it, and affirm the judgment.