

3d. It is not stated, against which clause of the ordinance the defendant had offended. 1803.

4th. It is not stated, that the defendant was convicted, though judgment is rendered against her.

The exceptions were supported by *M<sup>r</sup> Kean* and *Porter*; who cited, 1 *Burn.* 409. 142. *Ordin.* 29 *March* 1798, s. 16. *Bosc.* 12. 1 *Burn.* 411. 5 *State Laws*, 265. 1 *Burn.* 413. 3 *Mod.* 159. 2 *Burr.* 1163. 4 *Burr.* 2063. 5 *T. Rep.* 253. 2 *Burr.* 1176. *Hullock.* 19. 200, 201. *Bull. N. P.* 333. *Gilb. C. P.* 225. 234, 5. *Salk.* 378. 2 *Hawk.* 250. 1 *Stra.* 316. 2 *Stra.* 1120.

*Dickerson* (the solicitor for the corporation) endeavoured to answer the exceptions; and cited 1 *Stra.* 316. 10 *Co.* 125. 1 *Bac. Abr.*

But, by the COURT: Some of the objections are insurmountable. In the first place, it is not sufficient to state the evidence; but the magistrate must go on to declare, that the offence was committed, and the defendant thereof convicted. Here, neither the offence, nor the conviction, are to be found in the proceedings. In the next place, we have no statement where the defendant carried on the business of huckster; and it might be where it was no offence to do so; or where the corporation had no jurisdiction to punish it as an offence. The proceedings are, therefore, manifestly erroneous, and must be set aside.

#### Black, Plaintiff in Error, *versus* Wistar.

IN error, from the Court of Common Pleas of *Northumberland* county. The case was, briefly, this: *William Wistar* brought an action of debt against *James Black*, in the Common Pleas, to *April* term 1798. The writ demanded a debt of 766*l.* 9*s.* 5*d.* The declaration demanded a debt of 766*l.* 4*s.* 5*d.* on a bill obligatory for that sum, dated the 28th of *May* 1796, and payable in three months with interest. On the 10th of *September* 1798, judgment was entered for 869*l.* 3*s.* 6*d.* with costs. A *fi. fa.* issued to *January* term 1799, for 766*l.* 9*s.* 5*d.* which was regularly returned, "Staid by order of plaintiff's attorney;" with an additional indorsement, signed by *Black*, the defendant below, in these words: "I agree that the sheriff return a levy on "this writ, as of the term to which it is returnable:" and such a return was accordingly made, at a subsequent period. On the 18th of *July* 1800, the sheriff held an inquest, by virtue of the above *fi. fa.* and returned the inquest annexed to the writ. The inquest condemned the property; and it was afterwards sold on a *vend. exp.* when *Wistar* became the purchaser.

The

1803. The following errors were now assigned:

- 1st. The count varies from the writ, in the sum demanded.
- 2d. The judgment varies from both writ and count, in the sum recovered.
- 3d. The judgment was entered after the defendant's appearance, not in term time, nor at the settlement of the docket, nor according to any rule.
- 4th. The execution varies from the judgment, in the sum for which it issued.
- 5th. The execution was returned by the sheriff to *January* term 1799, as having been "staid by order of plaintiff's attorney;" but after that, another return was made; to wit, "that the lands and tenements of the defendant had been levied upon;" and an inquest was held upon the estate, in *July* 1800, by virtue of which the land, &c. was condemned, without any other authority, than the *fi. fa.* that had been returned, as aforesaid, to *January* term 1799.
- 6th. The general errors.

The case was argued by *W. Tilghman*, for the plaintiff in error, who cited the following authorities, principally to show, that the variances in the writ, count, judgment, and execution, were fatal. 1 *Cro.* 198. 434. 5 *Com. Dig.* 25. *C.* 13. 1 *Cro. E.* 829. 308. *Boh. Inst.* 534. *Reg. Plac.* 282. 8 *Vin. Abr.* 474. *pl.* 1. 4. *A.* 2. *Br. Error, pl.* 7. 9 *H.* 6. 38. 9 *Vin. Abr.* 474. *pl.* 6. *Co. Litt.* 288. *b.* 1 *State Laws*, 73. *s.* 9. 3 *Bac. Abr.* 369. *P. Ibid.* 570. *Roll. Abr.* 778. 3 *Com. Dig.* 313. *I.* 3.

*M. Keán*, for the defendant in error, proved that the judgment had been entered by the consent in writing, of the defendant's attorney, for the exact sum agreed upon. He then moved, for leave to amend the execution by the judgment; citing the following authorities, to show the extent to which amendments had been permitted, in every stage of a suit. 8 *Rep.* 157. 16 *Œ* 17 *Car.* 2. *c.* . 1 *Vent.* 100. 5 *Geo.* 1. *c.* 13. 2 *Bl. Rep.* 836. 1 *Suppi. Vin. Abr.* 228. *pl.* 6. 1 *T. Rep.* 782. 1 *Bl. Rep.* 462. 2 *Vent.* 152. 8 *H.* 6. *c.* 15. 14 *Ed.* 3. 1 *Wils.* 303. 6 *T. Rep.* 450. 1 *Sup. Vin. Abr.* 210. *pl.* 9.

The COURT (adverting to the proceedings by consent, to the means of amending the process by the præcipe, and the *fi. fa.* by the judgment) declared they had doubt upon the case.

Judgment affirmed.

Mitchell