

UNITED STATES v. GORDON.

{1 Cranch, C. C. 58.}¹

Circuit Court, District of Columbia. Jan. Term, 1802.

SELLING LIQUOR WITHOUT
LICENSE—INFORMATION.

1. In an information for selling spirituous liquors without license, it is not necessary to specify the kind of liquor, nor the person to whom sold.
2. All the acts of selling constitute one offence.

Information [against Robert Gordon] for selling spirituous liquors. Motion in arrest of judgment. 1st Because the particular kind of liquor is not specified in the information. 2d. Because the person is not named to whom sold.

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Mr. E. J. Lee, for defendant. The clause of the act of assembly upon which this prosecution is founded, is in the following words. Rev. Code, p. 212, § 4. "If any person, without such license, shall open a tavern, or sell by retail, wine, beer, cider, rum, or brandy, or other spirituous liquors, or a mixture thereof, to be drank in or at the place where it shall be sold, or in any booth, arbor, or stall, such offences shall be deemed a breach of good behavior, and he or she so offending, shall moreover forfeit and pay the sum of thirty dollars, to be applied towards lessening the county levy." By the fifth section, the offender, upon a second conviction, is to be imprisoned six months without bail or mainprise. Every selling is a distinct offence. If this was not the case, a conviction for the last selling would bar a prosecution for all the former offences. *Rex v. Robe*, 2 Strange, 999; *Davy v. Baker*, 4 Burrows, 2471; *Rex v. Mason*, 2 Term R. 581; *Style*, 186.

Mr. Simms, on the same side. The information is not sufficiently certain to enable the defendant to meet the charge by counter evidence, or to plead it in bar of a subsequent prosecution. By the fifth section of the act, a higher penalty is annexed to a second offence, and in such case the indictment must state the prior conviction. A declaration, in trover as uncertain as this, would be bad (5 Bac. Abr. 272); a fortiori, an information, or an indictment The court is bound, ex officio, to see that the information states sufficient to warrant a judgment. *Rex v. Wheatly*, 2 Burrows, 1127; 2 Ld. Raym. 1410; 2 Hawk. P. C. 332. The offence is alleged to have been committed on the 10th of August, 1798; and the information was not filed until April, 1800, more than twelve months after the offence committed, contrary to the act of assembly (Rev. Code, p. 113).

Mr. Mason, contra. The limitation of one year applies to the prosecution, not to the filing of a particular process. The presentment upon which the information was filed was within the year. The first step was the presentment, and that is the commencement of the prosecution. Rev. Code, p. 106, § 2. Circumstances which constitute the offence, must be set out. But where they are not of the essence of the offence, there, if set forth, they are only surplusage. *Rex v. Home*, Cowp. 682. The words of the act are “spirituous liquors or a mixture thereof.” It may be impossible for a man to say what kind of liquors constitute the mixture; and yet he may be certain that he is drinking spirituous liquors. *Rex v. Gibbs*, 1 Strange, 497. All the acts of selling spirituous liquors before conviction constitute but one offence *Crepps v. Durden*, Cowp. 640.

Motion overruled and judgment entered.

{For subsequent proceedings, see Case No. 15,234.}

¹ [Reported by Hon. William Cranch, Chief Judge.]

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