

UNITED STATES *V.* UPHAM *ET AL.*¹

Circuit Court, S. D. Alabama.

June 26, 1890.

INDICTMENT—NAME—INITIALS.

An indictment against a man by the Initials of his Christian name only is subject to plea in abatement, unless the grand jury add that his name is unknown to them otherwise than is set out.

At Law. On demurrer to plea in abatement to indictment for conspiracy.

M. D. Wickersham, U. S. Atty.

G. L. & H. T. Smith, for defendant.

TOULMIN, J. An indictment which sets forth the defendant's Christian name by initials only is subject to plea in abatement, unless it is alleged that the Christian name was unknown to the grand jury otherwise than as laid* in the indictment. As said by the court in the case of *Gerrish v. State*, in 53 Ala. 476: "If the grand jury knew only the initials of defendant's First names, and could not have found out by reasonable diligence what these names were, it would have been legal for them to have indicted him as * * * [E. R. Upham,] using the initials as such, if they had added that his name was un-known to them otherwise than as set out. But this they have not done, and so the indictment is left subject to the plea in abatement."

See *Gerrish v. State*, 53 Ala. 476; *Washington v. State*, 68 Ala. 85; 1 Bish. Crim. Proc. §§ 566, 676, 677, 680. Demurrer to the plea is overruled. Upon issue to the plea, which was then joined, it was admitted that the letters "E. R." used in the indictment were used as the initials of the true Christian name of E. R. Upham, and not as his baptismal name, whereupon the court instructed the jury to find the issue in favor of the defendant. *Gerrish v. State*, *supra*; 1 Bish. Crim. Proc. § 677; *Smith v. State*, 8 Ohio, 294.

¹ Reported by Peter J. Hamilton, Esq., of the Mobile bar.