ent character altogether, and by different witnesses, and not tending in any degree to establish the fact of insanity.

We therefore think that there was error on the part of the circuit judge in rejecting the testimony, and reverse the judgment and remand the cause for a new trial.

MARTIN v. THE STATE.

NASHVILLE, DECEMBER, 1845.

MISDEMEANOR—INDICTMENTS. In indictment for misdemeanors as great certainty is not required as in indictments for felonies.

SELLING OF LIQUOR TO SLAVE—INDICTMENT. An indictment for selling liquor to a slave is good which mentions the name of the owner but not the name of the slave, and which charges that the sale was without a written permit from the master, without further averring that there was no written permission from the mistress or agent. (Acc. Sword v. State, 5 Humph., 102. But it seems from Taylor v. State, 7 Humph. 11, citing this case, that the indictment was fatally defective, if the point had been made, inasmuch as the act, under which it was found, did not require that the permit should be in writing.]

[Cited in. 7 Hum., 511.]

In 1829 (ch. 76) the legislature declared by law that "any person who shall sell to any negro slave any spirituous liquors, without a permit in writing from the master or mistress of such negro slave, shall be indictable, and, upon conviction, shall be fined in a sum not less than five nor more than fifty dollars."

In 1842 (ch. 141) it was enacted that "no person shall sell any vinous, spirituous, or fermented or intoxicating liquors in any quantity to any slave or slaves without permission from his or her owner, master, mistress, or agent of the owner;" and the statute subjects the person offending against the statute to a fine and imprisonment not less than one week and not more than thirty days.

[205] Under these statutes, at the July term of the circuit court for Montgomery county, in 1845, the grand jury indicted Ambrose Martin. The indictment alleged that "Ambrose Martin, on the tenth day of July, 1845, in the county aforesaid, was guilty of selling spirituous liquors to a negro slave, the property of Abner Vaughn,

without a permit in writing from his master; contrary," etc.

On the plea of not guilty the defendant was convicted. The defendant moved the court in arrest of judgment. The presiding judge, M. A. Martin, overruled the motion, and sentenced the defendant to imprisonment for ten days, and to pay the costs of the prosecution. Defendant appealed.

Boyd and Shackleford, for plaintiff in error.

They contended, first, that it must be charged that there was a sale to a slave, and, to notify the defendant of the particular offence charged, it was necessary to state the slave or person to whom the liquor was sold. This was necessary for two reasons—first, to identify the offence of which the defendant should be acquitted or convicted, with a view to his future defence against a subsequent prosecution; and, secondly, with a view to enable him to defend himself against the existing prosecution. Vaughn may have had many slaves, and the defendant might be prepared to prove his innocence if notified by the record of the charge intended to be established against him. They cited 1 Dev. & B. 199.

They contended, in the second place, that it was no offence to sell liquors to a slave, except by virtue of the statutes of 1829, ch. 76, and 1842, ch. 141; that this was *malum prohibitum*, and not *malum in se*; that, therefore, the indictment should bring the defendant within the terms of the statute, and negative a permission by any one authorized by the statute to give such permission, viz., the master or agent of the owner or mistress.

This was done, and they cited in support of this position 2 Yerg. 22, 233.

Attorney General, for the State.

[206] Turley, J., delivered the opinion of the court.

Ambrose Martin was convicted in the circuit court of Montgomery county, at the November term, 1845, of the offence of selling spirituous liquors to a slave without a written permission from the slave's master so to do.

The bill of indictment charges that "he was guilty of selling spirituous liquors to a slave, the property of Abner Vaughn, without a permit, in writing, from his master;"

and it is now contended that this indictment is substantially defective, for two reasons: 1st, that the description of the negro is not given with sufficient certainty; that he should have been described by name as well as by ownership. We do not think so. We have repeatedly decided that in indictments for misdemeanors we will not require as great certainty as in indictments for felonies. Certainty, to a common intent, is sufficient. To hold that the name of the negro and the name of his master should be in every instance specified in the indictment would be to require a degree of certainty destructive to prosecutions of this character. 2d, it is contended that the indictment is bad because it does not aver that there was no written permission from the mistress or agent of the owner of the slave. We do not think so. The statute which creates the offence makes a written permission from the master of the slave, or from his mistress, or from the agent of the owner, a sufficient warrant to authorize the selling; that is, if the slave have a master, his written permission is required; if he have a mistress, her written permission is required; but, if he be under the control of an overseer, his written permission is required instead of that of his master or mistress. Therefore, when a negro is described as the property of a master or mistress and the execution of a written permission from either the one or the other, as the case may be, is negatived, it is good, for there may be no overseer or agent; in nine cases out of ten there would be none, and why negative that which may by bare possibility exist, and which, if it do, constitutes a defence fully within the knowledge of the accused, and of which he can readily avail himself?

[207] We do not think that there is anything inconsistent with this view of the case in the cases of The State v. Jones, 2 Yerg. 22, and Matthews v. The State, Id. 233, to which we have been referred as authorities. In both these averments of the existence of facts held to be necessary to constitute the offence charged, were omitted, but not so here. The averment is made, and, as we have said, with sufficient certainty. The negro is described as the property of Abner Vaughn, and the existence of any written authority from him is expressly negatived. We will not

intend that there might have been some one else authorized to give such permission.

The judgment will, therefore, be affirmed.

MAY v. M'KEENON.

NASHVILLE, DECEMBER, 1845.

REGISTRATION—PROBATE IN ANOTHER STATE—JUDGE OF A SUPERIOR COURT. Under 1839, 26, 2, which authorizes the probate of instruments for registration to be made in another State before "a judge of the supreme or superior court," the terms "supreme" or "superior" do not refer to the style or designation of the courts, but to their grade and dignity in point of jurisdiction; and, therefore, a probate before J. R., "resident Judge of the 9th Judicial District of the Commonwealth of Pennsylvania," is good. (See, now, Code, sec. 2040.)

McKeenon brought this action of ejectment in the circuit court of Sumner county, against May; and, on the trial before Judge Marchbanks, he introduced a deed in support of his title, the acknowledgment of which was in the following words:

"Pennsylvania, Cumberland County.—Before me, the subscriber, John Read, president judge of the 9th judicial district of the commonwealth of Pennsylvania, composed of the counties of Cumberland, Perry, Juniatta, personally came the above-named Stephen Cesna, the above grantor, and acknowledged the above indenture to be his act and deed, and desired that the same might be recorded as such. Witness my hand and seal.

"25th November, 1836. John Read."

The reading of this deed was objected to by the defendant on the ground that it did not appear that the above-named John Read was a judge of a superior or supreme court in the State of Pennsylvania.

[208] This objection was overruled by the presiding judge, and the deed read. A verdict and judgment were rendered for the plaintiff, and defendant appealed.

Guild, for plaintiff in error.

J. J. White, and Baldridge, for defendant in error.

Reese, J., delivered the opinion of the court.