

King v. Lukens, 1 U.S. 5 (1762)

U.S. Supreme Court
1 U.S. 5 (Dall.)

The King
v.
John Lukens

Supreme Court of Pennsylvania

April Term, 1762

Indictment for a Nuisance. Mr. Dickenson, for the Defendant, moved that a Prosecutor should be indorsed on the Indictment, agreeably to the Act of Assembly, [^*] before the Defendant should be put to plead. Mr. Chew, Attorney General, urged that such a Construction ought to be put on the Act as that public Justice may not be eluded; and that there should be no Necessity to indorse a Prosecutor, unless it be proved that there is some person active in carrying on a Prosecution; because, if it took its rise from the Grand Jury, or a Justice of the Peace, no Person could be indorsed; and Offenders of the highest Nature would escape being brought to Justice.

By the Court. It often happens that all the Witnesses necessary to support a public Prosecution are brought unwillingly to give Evidence; and the Act could never intend there should be a Prosecutor

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indorsed, unless there was really a Prosecutor existing, for the Words in the Act are, the Prosecutor. And as no Person in the present Case is proved to be active in carrying on the

Prosecution, the Defendant must plead to the Indictment without any Indorsement.

It was then moved, that the Defendant himself might be sworn to prove the Person prosecuting; but denied by the Court, who said it must be proved by indifferent Witnesses.

Footnotes

[^*]: 4. Ann. c. 37. see 1 State 1 vers 49.