

*See Court  
1100 - 1100  
writing for  
original*

Vol. I.

(Original)

TRANSCRIPT.

.....  
APPEALED FROM THE CIRCUIT COURT OF RHEA COUNTY

HON. J. T. RAULSTON, JUDGE.

VOLUME NO. I.  
.....

JOHN THOMAS SCOPES, PLAINTIFF IN ERROR

VS.

STATE OF TENNESSEE, DEFENDANT IN ERROR.  
.....

John R. Neal,  
Clarence Darrow,  
Arthur G. Hayes,  
Dudley Field Malone,  
William T. Thomas, and  
Frank Mackelwie,

Attorneys for Plaintiff in Error

T. A. Stewart, Atty. Genl.,  
William Jennings Bryan,  
William Bryan,  
B. G. McKenzie,  
J. G. McKenzie,  
S. K. Hicks,  
H. E. Hicks, and  
W. C. Haggard,

Attorneys for Defendant in Error.

Defendant under bond.

*Filed September 17<sup>th</sup> 1925*

*W. C. Haggard*

INDEX TO COURT RECORD.

Bill of Costs,-----	Page 46.
Bill of Exceptions, See Vol. II, III & IV. (Index Vol. II)	
Bond of Appeal,-----	Page 45.
Caption of Court,-----	" 1.
Charge of Court,-----	" 37.
Certificate of Clerk,-----	" 833 Vol. IV.
Demurrer,-----	" 8.
Indictment,-----	" 1.
Judgment of Court,-----	" 41.
Motion for New Trial,-----	" 42.
Motion to Quash Indictment,-----	" 3.
Order Overruling Motion for New Trial,-----	" 44.
"          "          "          to Quash Indictment,-----	" 13.
"          "          Demurrer,-----	" 31.
"          Sustaining Motion to Exclude Expert Tes.-----	" 32.
Verdict of Jury,-----	" 41.

See Volume No. 2 for Index to Bill of Exceptions.

State of Tennessee, )  
Rhea County. )

Be it remembered that a Circuit Court was opened and held at the Courthouse in the Town of Dayton on July 10th, 1925, pursuant to a call heretofore duly and regularly made by his Honor Judge J. T. Raulston, Judge of the Eighteenth Judicial Circuit, who was present and presiding, to wit: SPECIAL TERM OF COURT CALLED: To E. B. Ewing, Circuit Court Clerk, Dayton, Tennessee. You are hereby notified that a Special Term of Court is hereby called and will be held at Dayton, Tennessee, on the 10th, day of July, 1925, for the transaction of any and all legal business that could be heard, transacted and disposed of at the regular term Court. This May the 25th, 1925. (Signed) J. T. Raulston, Judge.

Which said call was duly and regularly made and published in the Dayton Herald, a news paper printed in Rhea County at Dayton, Tennessee, in all things as required by law, and also upon due and legal notice to the Clerk of the Circuit Court of Rhea County, Tennessee.

The following proceedings were had and entered of record, to wit:

.....

INDICTMENT.

STATE OF TENNESSEE, )  
RHEA COUNTY. )  
CIRCUIT COURT, JULY SPECIAL TERM, 1925.

The Grand Jurors for the State aforesaid, being duly summoned, elected, empaneled, sworn and charged to inquire for the body of the County aforesaid, upon their oaths present: That John Thomas Scopes, heretofore on the 24th, day of April, 1925, in the County aforesaid, then and there, unlawfully did wilfully teach in the public schools of Rhea County, Tennessee, which public schools are supported in part and in whole by the public school fund of the State, a certain theory and theories that deny the story of the Divine creation of man as taught in the Bible, and did teach instead



Monday morning July 13th, 1925, Court was opened in due form of law at 9, o'clock, present and presiding the Hon. J. T. Raulston, Judge, when the following proceedings were had and entered of record, to wit:

STATE OF TENNESSEE )	
S                  )	
vs.          )	MOTION TO QUASH INDICTMENT.
JOHN T. SCOPES      )	

The defendant moves the Court to quash the indictment in this case for the following reasons:

First.---(A) Because the act which is the basis of the indictment, and which the defendant is charged with violating, is unconstitutional and void in that it violates Sec. 17, Article II of the Constitution of Tennessee:

Sec. 17. Origin and frame of bills.--- Bills may originate in either house; but may be amended, altered or rejected by the other. No bill shall become a law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended.

(B) In that it violated Sec. 12, Article XI of the Constitution of Tennessee:

Sec. 12. Education to be cherished; common school fund; poll tax; whites and negroes; colleges, etc., rights of.--Knowledge, learning and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the state, being highly conducive to the promotion of this end, it shall be the duty of the General Assembly in all future periods of this government, to cherish literature and science. And the funds called the common school fund, and all the lands and proceeds thereof, dividends, stocks, and other property of every description whatever, heretofore by law appropriated by the general assembly

The defendant moves the Court to quash the indictment in this case for the following reasons:

First.---(A) Because the act which is the basis of the indictment, and which the defendant is charged with violating, is unconstitutional and void in that it violates Sec. 17, Article II of the Constitution of Tennessee:

Sec. 17. Origin and frame of bills.--- Bills may originate in either house; but may be amended, altered or rejected by the other. No bill shall become a law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended.

(B) In that it violated Sec. 12, Article XI of the Constitution of Tennessee:

Sec. 12. Education to be cherished; common school fund; poll tax; whites and negroes; colleges, etc., rights of.--Knowledge, learning and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the state, being highly conducive to the promotion of this end, it shall be the duty of the General Assembly in all future periods of this government, to cherish literature and science. And the funds called the common school fund, and all the lands and proceeds thereof, dividends, stocks, and other property of every description whatever, heretofore by law appropriated by the general assembly of this state for the use of common schools, and all such as shall hereafter be appropriated, shall remain a perpetual fund, the principal of which shall never be diminished by legislative appropriations; and the interest thereof shall be inviolably appropriated

to the support and encouragement of common schools throughout the state, and for the equal benefit of all the people thereof; and no law shall be made authorizing said fund or any part thereof to be diverted to any other use than the support and encouragement of common schools. The state taxes, derived hereafter from polls shall be appropriated to educational purposes, in such manner as the general assembly shall from time to time direct by law. No school established or aided under this section shall allow white and negro children to be received as scholars together in the same school. The above provisions shall not prevent the legislature from carrying into effect any laws that have been passed in favor of the colleges, universities or academies, or from authorizing heirs or distributees to receive and enjoy escheated property under such laws as may be passed from time to time.

(C) In that it violates Sec. 18, Article 2 of the Constitution of the State of Tennessee:

Sec. 18. Of the passage of bills.---Every bill shall be read once, on three different days, and be passed each time in the house where it originated, before transmission to the other. No bill shall become a law until it shall have been read and passed, on three different days in each house, the assent of a majority of all members to which that house shall be entitled under this constitution; and shall have been signed by the respective speakers in open session, the fact of such signing to be noted on the journal; and shall have received the approval of the governor, or shall have been otherwise passed under the provisions of this constitution.

(D) In that it violates Sec. 3, Article I of the Constitution of Tennessee:

Sec. 3. Right of Worship free.----That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no

human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall be given, by law, to any religious establishment or mode of worship.

(E) In that it violates Sec. 19, Article I of the Constitution of Tennessee:

Sec. 19. Printing presses free; freedom of speech, etc., secured.---That the printing presses shall be free to every person to examine the proceedings of the legislature; or of any branch or officer of the government, and no law shall be ever made to re-  
*strain*  
the right thereof.

The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty. But in the prosecutions for the publications of papers investigating the official conduct of officers, or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other criminal cases.

(F) In that it violates Sec. 8, Article I of the Constitution of Tennessee:

Sec. 8. No man to be disturbed but by law.---That no man shall be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

(G) In that the Act and the Indictment and the proceedings herein are violative of Sec. 9, Article I of the Constitution of Tennessee:

Sec. 9. Rights of the accused in criminal prosecutions. That in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, and have a copy thereof, to meet the witnesses face to face, to have compulsory process for

obtaining witnesses in his favor, and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county in which the crime shall have been committed, and shall not be compelled to give evidence against himself.

(H) In that the Act, Prosecution, and Proceedings herein violate Section 14, Article I, of the Constitution of Tennessee:

Sec. 14. Crimes punished by presentment, etc.----That no person shall be put to answer any criminal charge but by presentment, indictment or impeachment.

(I) In that the Act violates Sec. 8, Article 11 of the Constitution of Tennessee:

Sec. 8. General laws only to be passed; corporations only to be provided for by general laws.----The legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals, inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals rights, privileges, immunities or exemptions other than such as may be, by the same law, extended to any member of the community who may be able to bring himself within the provisions of such law. No corporation shall be created, or its powers increased or diminished by special laws; but the General Assembly shall provide by general laws, for the organization of all corporations hereafter created, which laws may, at any time, be altered or repealed; and no such alteration or repeal shall interfere with or divest rights which have become vested.

SECOND (A) That the Indictment is so vague as not to inform the defendant of the nature and cause of the accusation against him.

(B) That the statute upon which the Indictment is based is void for indefiniteness and lack of certainty.

THIRD (A) In that the Act and the Indictment violate Section I of the Fourteenth Amendment of the Constitution of the

United States:

Sec. 1, Art. XIV. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

John Randolph Neal

Clarence Darrow

Dudley Field Malone

Arthur Garfield Hayes

W. O. Tompson.  
Attorneys.

Filed July, 13th, 1925.

E. B. Ewing, Clerk.

STATE OF TENNESSEE )

vs. )

DEMURRER TO INDICTMENT.

JOHN T. SCOPES )

The defendant moves the Court to demur to the indictment in this case for the following reasons:

FIRST.--(A) Because the Act which is the basis of the indictment, and which the defendant is charged with violating, is unconstitutional and void in that it violates Sec. 17, Article II of the Constitution of Tennessee:

Sec. 17. Origin and frame of bills.---Bills may originate in either House; but may be amended, altered or rejected by the other. No bill shall become a law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended.

(B) In that it violated Sec. 12, Article XI of the Constitution of Tennessee:

Sec. 12. Education to be cherished; common school fund; poll tax; whites and negroes; colleges, etc., rights of.--Knowledge, learning and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the state, being highly conducive to the promotion of this end, it shall be the duty of the General Assembly in all future periods of this government, to cherish literature and science. And the funds called the common school fund, and all the lands and proceeds thereof, dividends, stocks, and other property of every description whatever, heretofore by law appropriated by the general assembly of this state for the use of common schools, and all such as shall hereafter be appropriated, shall remain a perpetual fund, the principal of which shall never be diminished by legislative appropriations; and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools

throughout the state, and for the equal benefit of all the people thereof; and no law shall be made authorizing said fund or any part thereof to be diverted to any other use than the support and encouragement of common schools. The state taxes, derived hereafter from polls shall be appropriated to educational purposes, in such manner as the general assembly shall from time to time direct by law. No school established or aided under this section shall allow white and negro children to be received as scholars together in the same school. The above provisions shall not prevent the legislature from carrying into effect any laws that have been passed in favor of the colleges, universities or academies, or from authorizing heirs or distributees to receive and to enjoy escheated property under such laws as may be passed from time to time.

(C) In that it violates Sec. 18, Article 2 of the Constitution of the State of Tennessee:

Sec. 18. Of the passage of bills.---Every bill shall be read once, on three different days, and be passed each time in the house where it originated, before transmission to the other. No bill shall become a law until it shall have been read and passed, on three different days in each house, the assent of a majority of all members to which that house shall be entitled under this constitution; and shall have been signed by the respective speakers in open session, the fact of such signing to be noted on the journal; and shall have received the approval of the governor, or shall have been otherwise passed under the provisions of this constitution.

(D) In that it violates Sec. 3, Article I of the Constitution of Tennessee:

Sec. 3. Right of Worship free.---That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no

human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall be given, by law, to any religious establishment or mode of worship.

(E) In that it violates Sec. 19, Article I of the Constitution of Tennessee:

Sec. 19. Printing presses free; freedom of speech, etc., secured.---That the printing presses shall be free to every person to examine the proceedings of the legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof.

The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. But in the prosecutions for the publications of papers investigating the official conduct of officers, or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other criminal cases.

(F) In that it violates Sec. 8, Article I of the Constitution of Tennessee:

Sec. 8. No man to be disturbed but by law.---That no man shall be taken or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

(G) In that the Act and the Indictment and the proceedings herein are violative of section 9, Article I of the Constitution of Tennessee:

Sec. 9. Rights of the accused in criminal prosecutions. That in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, and have a copy thereof, to meet the witnesses face to face, to have compulsory process for

obtaining witnesses in his favor, and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county in which the crime shall have been committed, and shall not be compelled to give evidence against himself.

(H) In that the Act, Prosecution, and Proceedings herein violate Section 14, Article I, of the Constitution of Tennessee:

Sec. 14. Crimes punished by presentment, etc.----That no person shall be put to answer any criminal charge but by presentment, indictment or impeachment.

(I) In that the Act violates Sec. 8, Article 11 of the Constitution of Tennessee:

Sec. 8. General laws only to be passed; corporations only to be provided for by general laws.----The legislature shall have power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals, inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals rights, privileges, immunities or exemptions other than such as may be, by the same law, extended to any member of the community who may be able to bring himself within the provisions of such law. No corporation shall be created, or its powers increased or diminished by special laws; but the General Assembly shall provide by general laws, for the organization of all corporations hereafter created, which laws may, at any time, be altered or repealed; and no such alteration or repeal shall interfere with or divest rights which have become vested.

SECOND (A) That the Indictment is so vague as not to inform the defendant of the nature and cause of the accusation against him.

(B) That the statute upon which the Indictment is based is void for indefiniteness and lack of certainty.

THIRD (A) In that the Act and Indictment violate Section I of the Fourteenth Amendment of the Constitution of the

United States:

Sec. 1, Art. XIV. All persons/<sup>born</sup> or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

John Randolph Neal

Clarence Darrow

Dudley Field Malone

Arthur Garfield Hayes

W. O. Thompson.  
Attorneys.

Filed July, 13, 1925.

E. B. Ewing, Clerk.

STATE OF TENNESSEE )

vs. )

JOHN T. SCOPEL )

COURT :

This case is now before me on a motion to quash the indictment, on the following grounds:

\*First: --(A) Because the act which is the basis of the indictment, and which the defendant is charged with violating, is unconstitutional and void, in that it violates Section 17, Article II of the Constitution of Tennessee, which reads as follows:

\*Section 17. Origin and frame of bills.---

Bills may originate in either house; but may be amended, altered or rejected by the other. No bill shall become a law which embraces more than one subject, that subject <sup>to be</sup> expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended."

It is insisted by the defendant, through his counsel that the body of the act involved in this case is not germane to the caption, and that the caption is too general in its terms, and that, therefore, the act is unconstitutional and void.

In passing upon this provision of our constitution, our supreme court has said:

\*Any provision of a statute germane to the subject expressed in the title directly or indirectly relating to that subject, and having a natural connection therewith, and not foreign thereto, is embraced in the title."

"It is not necessary that the title should express fully what is contained, in the body of the act, for it is not intended that the title should express everything contained in the act. So long as the subject matter of the body of the act is germane to that expressed in the title, there is an obedience to the mandates of the constitution."

The general title to the act is one which is broad and comprehensive and covers all legislation germane to the general subject stated. The title may cover more than the body, but it must not cover less. It need not index the details of the act, nor give a synopsis thereof.

It is further said:

"The title of a legislative bill may be broader and more comprehensive than the subject of legislation contained in the body of the act, so that one real subject of legislation is expressed in the title, and not by foreign matters."

In the case at bar the caption of the act involved provides, among other things, that the purpose of the act is to prohibit the teaching of evolution theory in the public schools, etc., of the State of Tennessee. It is true that this provision is rather general in its nature; and in my conception of the terms employed in the caption and in the body, those used in the caption are broader and more comprehensive than those employed in the body of the act; but in my opinion, the caption covers all the legislature provided for in the body, and is germane thereto, and in no way obscures the legislation provided for.

The purpose of this provision in our present constitution was to remedy an existing evil, and prevent laws on other subjects from being tacked onto a bill upon a wholly different subject, which tacked on laws in this way sometimes eluded the attention of the legislature, and were passed without sufficient consideration, and when passed, often remained for a time undiscovered, for the reason that the title of the act failed to call attention to the same, and prevent smuggling through the legislature important measures without due notice to the members of the legislature as their nature and purport of the matter under consideration.

In my judgment, the caption of this act is sufficient to put any member of the legislature on notice as to what the

nature of the proposed legislation is, and that really the caption is more comprehensive than the body of the act. Therefore, I am content to overrule this ground.

(B) In that it violated Sec. 12, Article XI of the Constitution of Tennessee, which reads as follows:

Sec. 12. Education to be cherished; common school fund; poll tax; whites and negroes; colleges, etc., rights of-- Knowledge, learning and virtue, being essential to the preservation of republican institutions, and the diffussion of the opportunities and advantages of education throughout the different portions of the State, being highly conducive to the promotion of this end, it shall be the duty of the General Assembly in all future periods of this government to cherish literature and science, And the funds called the common school fund, and all the lands and proceeds thereof, dividends, stocks, and other property of every description whatever, heretofore by law appropriated by the general assembly of this State for the use of the common schools, and all such as shall hereafter be appropriated, shall remain a perpetual fund the principal of which shall never be diminished by legislative appropriations; and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools throughout the State, and for the equal benefit of all the people thereof; and no law shall be made authorizing said fund or any part thereof to be diverted to any other use than the support and encouragement of common schools. The state taxes, derived hereafter from polls shall be appropriated to educational purposes, in such manner as the general assembly shall from time<sup>to</sup>/time direct by law. No school established or aided under this section shall allow white and negro children to be received as scholars together in the same school. The above provisions shall not prevent the legislature from carrying into effect any laws that have been passed in favor of the colleges, universities or academies, or from authorizing heirs or distributees to receive and enjoy escheated property under

under such laws as may be passed from time to time."

This is not seriously insisted by the defendant in this case that the indictment should be quashed on this ground. But that there may be no doubt as to the defendant's rights under this section, I will briefly state the law relative thereto.

This section of the Constitution makes it the express duty of every general assembly, at all times, to foster and cherish literature and science. As one of the chief means of accomplishing this most important purpose, the Constitution contemplated the establishment of a common school system, and provided the common school fund. But this provision of the Constitution is merely directory to the legislature and indicates the popular feeling and the public policy of the people of the State on this great question.

The Courts are not concerned in questions of public policy or the motive that prompts the passage or enactment of any particular legislation. The policy, motive or wisdom of statutes address themselves to the legislative department of the state, and not the judicial department. Therefore, this Court has no concern and no jurisdiction to pass upon this question, and is contented to overrule this ground.

(C) In that it violates Sec. 18, Article 2 of the Constitution of the State of Tennessee, which reads as follows: "Sec. 18." Of the passage of bills---Every bill shall be read once, on three different days, and be passed each time in the house where it originated, before transmission to the other. No bill shall become a law until it shall have been read and passed, on three different days in each house, and shall have received on its final passage in each house, the assent of a majority of all the members to which that house shall be entitled under this constitution; and shall have been signed by the respective speakers in open session, the fact of such signing to be noted on the journal; and shall have received the

approval of the Governor, or shall have been otherwise passed under the provisions of this Constitution."

As I understand the position of the defendant's counsel at bar, there is no insistence that this ground is good, and no evidence before the Court that would indicate the invalidity of this Act, because of any violation of this section of the constitution. Therefore, the same is overruled.

(D) In that it violates Sec. 3, Article I of the Constitution of Tennessee, which reads as follows:

"Sec. 3. Right of worship free.---That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right, be compelled to attend, erect or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience and that no preference shall ever be given by law, to any religious establishment or mode of worship."

And also:

(E) In that it violates Sec. 19, Article I of the Constitution of Tennessee, which reads as follows:

"Sec. 19. Printing presses free; freedom of speech, etc. Secured.---That the printing presses shall be free to every person to examine the proceedings of the legislature or of any branch or officer of the government, and no law shall be made to restrain the right thereof."

"The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. But in the prosecutions for the publications of papers investigating the official conduct of officers, or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall have the right to determine the law and the facts, under

the direction of the Court, as in other criminal cases."

It will be observed that the first provision in this section of our constitution provides that all men shall have the natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. I fail to see how this Act in any wise interferes or in the least restrains any person from worshiping God in the manner that best pleaseth him. It gives no preference to any particular religion or mode of worship. Our public schools are not maintained as places of worship, but, on the contrary, were designed, instituted, and are maintained for the purpose of mental and moral development and discipline.

This section fully provides that: "No man can of right be compelled to attend, erect or support any place of worship, or maintain any minister against his consent; that no human authority can in any case whatever control or interfere with the right of conscience; that no preference shall be given by law to any religion or established mode of worship,"

I cannot conceive how the teachers' rights under this provision of the constitution would be violated by the Act in issue. There is no law in the State of Tennessee that undertakes to compel this defendant, or any other citizen, to accept employment in the public schools. The relations between the teacher and his employer are purely contractual and if his conscience constrains him to teach the evolution theory, he can find opportunities elsewhere in other schools in the State, to follow the dictates of his conscience, and give full expression to his beliefs and convictions upon this and other subjects without any interference from the State of Tennessee or its authorities, so far as this Act is concerned. Neither do I see how the Act lays any restraint on his right to worship according to the dictates of his conscience. Under the provisions of this Act this defendant, or any other person, can entertain any religious belief which most appeals to their conscience. He can attend any church or connect himself with

any denomination or contribute to the erection of buildings to be used for public worship, as he sees fit. The Court is pleased to overrule these grounds.

(F) In that it violates Sec. 8, Article I of the Constitution of Tennessee, which reads as follows:

Sec. 8. No man to be disturbed but by law. --That no man shall be taken or imprisoned or dispossessed of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers or the law of the land."

As the Court understands, the defendant insists that this Section of the Constitution is the foundation for what is generally termed the law of the land.

"The law of the land means the law which embraces all persons who are in, or who may come into like situation and circumstances. It may be made to extend to all citizens, or to be consigned, under proper limitations, to particular classes. If the class be a proper one it matters not how few the persons are who may be included in it, if all who are in, or who may come into the like situation and circumstances, be embraced in the class, the law is general, and not partial."

The law of the land hears before it condemns; it proceeds upon inquiry, and renders judgment only after trial.

"Legislation in its operation upon the subjects to which it relates, and enforceable in the usual mode established in the administration of government with respect to kindred matters, that is, by process or proceedings adapted to the nature of the case, is the law of the land." 19

As the Court understands the provisions of the statute involved in the case at bar, it applies alike to all persons coming into the like situation and circumstances, so far as public schools are concerned. That is, it applies alike to all those who see proper to engage themselves as teachers in the public schools of the State of Tennessee. Therefore, I am of the opinion that this statute is not violative of this section of the constitution and that it does not unlawfully deprive this defendant of any of his liberties, privileges, or property, and for this reason the Court is pleased to overrule this ground.

(G) In that the Act and the indictment and the proceedings herein are violative of Sec. 9, Article I of the Constitution of Tennessee, which reads as follows:

"Sec. 9. Rights of the accused in criminal prosecutions, etc. That in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, and have a copy thereof, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the county in which the crime shall have been committed, and shall not be compelled to give evidence against himself."

And also:

(H) In that the Act, Prosecution and Proceedings herein violate Section 14, Article I, of the Constitution of Tennessee, which reads as follows:

"Sec. 14. Crimes punished by presentment, etc.---That no person shall be put to answer any criminal charge but by presentment, indictment or impeachment."

As the Court conceives, both of these grounds are predicated upon the same objection to the statute and the indictment, therefore, they will be considered together. One objection as the Court understands, that is insisted upon is that both the statute and the indictment are two vague and un-

certain to put him on notice of the nature of the accusation brought against him. The requirement, as the Court understands, is this: The description of the offense charged in the indictment must be sufficient in definiteness, certainty and precision to enable the accused to know what offense he is charged with and understand the special nature of the charge he is called upon to answer; to enable the Court to see from the indictment a definite offense, so that the Court may apply its judgment and determine the penalty or punishment prescribed by law, and also to enable the accused to protect himself from a second prosecution for the same offense.

"A description distinguishing the offense from all other similar offenses is not required. That degree or precision in the description of the particular offense cannot be given in the indictment so as to distinguish it per se from all other cases of a similar nature. Such discrimination amounting to identification must rest in averment by plea and in the proof; and its absence in description in the indictment can be no test of the certainty required either for defense against the present prosecution or for protection against a future prosecution for the same matter."

"The description of a statutory offense in the words of the statute is sufficient, and renders the indictment sufficiently certain if it gives the defendant notice of the nature of the charge against him."

The statute involved in this case, in part, reads as follows:

Sec. 1, Be it enacted by the General Assembly of the State of Tennessee, that it shall be unlawful for any teacher in any

all  
of the universities, normals, and/other  
public schools of the State which are sup-  
ported in whole or in part by the public  
school fund of the State, to teach any theory  
that denies the story of the divine creation  
of man as taught in the Bible and teach in-  
stead that man has descended from a lower or-  
der of animals."

The indictment, in part, reads:

"That John Thomas Scopes, heretofore on the  
24th day of April, 1925, in the county aforesaid,  
then and there unlawfully did wilfully teach public  
the public schools of Rhea County, Tennessee,  
which said public schools are supported in part,  
or in whole by the public school fund of the  
State, a certain theory or theories that denied  
the story of the divine creation of man as taught  
in the Bible, but did teach instead thereof, that  
man is descended from a lower order of animals, he,  
the said John Thomas Scopes, being at the time, and  
prior thereto, a teacher in the public schools of  
Rhea County, Tennessee, as foresaid, against the  
peace and dignity of th State."

As the Court conceives, the description of the offense  
as stated in the indictment, substantially copies the words of  
of the statute, and is therefore sufficiently certain, and the  
Court is pleased to overrule this objection.

(I) In that the Act violates Sec. 8 Article 11 of the  
Constitution of Tennessee, which reads as follows?

Sec. 8. General laws only to be passed; corporations  
only to be provided for by general laws.--The legislature shall  
have no power to suspend and general law for the benefit of any  
particular individual, nor to pass any law for the benefit of  
individuals, inconsistent with the general laws of the land;

nor to pass any law granting to any individual or individuals rights, privileges, immunities or exemptions other than such as may be, by the same law, extended to any member of the community who may be able to bring himself within the provisions of such law. No corporation shall be created, or its powers increased or diminished by special laws; but the General Assembly shall provide by general laws, for the organization of all corporations hereafter created, which laws may, at any time, be altered or repealed; and no such alteration or repeal shall interfere with or divest rights which have become vested."

The Court is of the opinion that what has been said in discussing Section 8 of the first Article of the Constitution of Tennessee above, would also be applicable to the objection made under this ground. In the defining and construing individual rights under this section, our Supreme Court said:

"If the classification is made under this section, everyone who is in, or may come into the situation and circumstances which constitute the reasons for and the basis of the classification, must be entitled to the rights, privileges, immunities and exemptions conferred by the statute or would be partial and void. If the classification is made under Section 8 of the First Article of the Constitution everyone who is in or may come into the situation and circumstances which constitute the reasons for the basis of the classification, must be subjected to the disabilities, duties, obligations and burdens imposed by the statute, or it would be partial and void. It follows that the cases that have been decided upon either of the subsections are <sup>of</sup> equal value in arriving at the meaning of the expression and requirement that all class legislation must be so framed as to extend to and embrace equally all persons who are in or may come

into the like situation and circumstances and which makes a reasonable and natural classification, is valid and constitutional."

Therefore the Court is pleased to overrule on this ground.

(J) In that the Act violates Sec.2, Article II of the Constitution of Tennessee; which reads as follows:

Sec. 2. No person to exercise powers of more than one department. No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted."

So far as the Court can recall there is no insistence by the defendant that this ground should be sustained by the Court, and for that reason it is passed and overruled.

SECOND (A) That the indictment is so vague as not to inform the defendant of the nature and cause of the accusation against him.

And also:

(B) That the statute upon which the Indictment is based is void for indefiniteness and lack of certainty.

The questions raised by these sections have been discussed in an other part of this opinion, fully, and the grounds stated upon which the same questions have been overruled. Therefore, these are overruled without further comment.

THIRD (A) In that the Act and the Indictment violate Section 1 of the Fourteenth Amendment of the constitution of the United States, which reads as follows:

"Sec. 1. Art. XIV. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;

Nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

As Court conceives, the defendeants raised the same question under this assignment of this ground as they did under Section 8 of Article I of the Constitution of Tennessee, except, they insist that the Act involved in the case at bar, not only violates Section 8 of Article I of the Constitution of Tennessee, but in like particular violates Article I of the Fourteenth Amendment to the Constitution of the United States.

In the case of Meyer vs, State of Nebraska, decided by Justice<sup>Mc</sup> Reynolds, and quoted in 67 Law Ed., U.S. Reports, on page 390, a case wherein the plaintiff in error was tried and convicted upon and indictment in Hamilton County Nebraska, under a charge that on May 25, 1920, while an instructor in Zion Parochial School, he unlawfully taught the subject of reading in the German language, to Raymond Parpart, a child of ten years, who had not attended and successfully passed the eighth grade, the opinion was based upon an Act relating to the teaching of foreign languages in the State, approved April 9, 1919, which was as follows:

"Section 1.- No person, individually or as a teacher, shall, in any private, denominational, parochial or public school, teach any subject to any person in any language other than the English language.

"Section 2.- Languages other than thr English language may be taught as languages only after a pupal shall have attained and successfully passed the Eighth grade, as evidenced by a certificate of graduation issued by the County Superintendent of the County in which the child resides.

"Section 3.- Any person who violates any of the provisions of this act shall be guilty of a misdemeanor

25

and upon conviction shall be subject to a fine of not less than Twenty-five (\$25.) Dollars, nor more than One Hundred (\$100.00) Dollars, or be confined in the county jail for any period not exceeding thirty days for each offense.

"Section 4.- Whereas an emergency exists this act shall be enforced and after its passage and approval."

The Supreme Court of the State affirmed a judgment of conviction. It declared the offense charged and established was direct and intentional teaching of the German language as a distinct subject to a child who had not passed the Eighth grade in the parochial school maintained by the Zion Evangelical Lutheran congregation, a collection of biblical stories being used therefor, and it held that the statute forbidding this did not conflict with the 14th Amendment, but was a valid exercise of the people's power.

In deciding this case Justice Reynolds said:  
for our

"The problem/determination is, whether the statute as construed and applied, unreasonably infringes the liberty guaranteed to the plaintiff in error by the 14th Amendment, 'No state shall deprive any person of life, liberty or property without due process of law.'

"While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt it denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home, and to bring up children, to worship God according to the dictates of his own conscience, and generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

"That the State may do much, go very far indeed, in order to improve the quality of its citizens, physically, mentally and morally is clear; but the individual has certain fundamental rights which must be respected. The protection of the constitution extends to all, - to those who speak other languages as well as to those born with the English on the tongue. Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the constitution, - a desirable end cannot be promoted by prohibited means."

"The desire of the legislature to foster, (a) homogeneous people with American ideals, prepared readily to understand current discussions of civic matters, is easy to appreciate. Unfortunate experiences during the late war, and aversion toward every characteristic of truculent adversaries, was certainly enough to quicken that aspiration. But the means adopted, we think, exceed the limitations from the power of the State and conflict with rights assured to plaintiff in error. The interference is plain enough, and no adequate reason therefor in time of peace and domestic tranquility has been shown."

"But the power of the State to compel attendance at some school and to make reasonable regulation for all schools, including a requirement that they shall give instructions in English is not questioned, nor has challenge been made of the State's power to prescribe a curriculum for institutions which it supports. Those matters are not in the present controversy. Our concern is with the prohibition approved by the Supreme Court."

In the case of *Pierce, et als. vs. Society of the Sisters of the Holy Names of Jesus and Mary*, decided about June 1st, 1925, <sup>also</sup> by Justice McRenolds, coming up from the State of Oregon. This case also involved the right of a citizen as guaranteed by the 14th Amendment of the Constitution of the

United States. The Court, in commenting, said:

"No question is raised concerning the power of a state reasonably to regulate all schools, to inspect, supervise, and examine them, their teachers and pupils, to require that all children of proper age attend some school, that teachers shall be of good moral character, and of patriotic disposition, that certain studies, plainly essential to good citizenship must be taught, and that nothing be taught which is inimical to the public welfare.

"Under the doctrine of Meyer v. Nebraska, 262 U.S., page 390, we think it is entirely plain that the act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control. As often heretofore pointed out, rights granted by the constitution may not be breached by legislation, which has no reasonable relation to some other purpose than the competency of the statutes. The fundamental theory of liberty upon which all governments in the United States repose, excludes the general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty to recognize and prepare him for additional obligations."

In the Meyer case the statute, in part provided:

"No person individually, or as a teacher shall in any private, denominational or parochial or public school, teach any subject/ <sup>to any person</sup> in any language other than the English language."

In passing on the constitutionality of this statute, the court held it unconstitutional under the 14th Amendment to the constitution of the United States. But this act is, as is apparent from its reading, applied to all schools in the State of <sup>Nebraska</sup> Oregon, and an obedience to its provisions would have

made it impossible for any child, regardless of its nationality ancestry, or purposes in life, to have been taught by any teacher any subject except in the English language, and I think the court properly held that this/<sup>was an</sup> infringement upon the rights of individuals living in that state; but, as above indicated, it will be observed that the court in passing upon this act, observed, "the power of the State to compel attendance at some school and to make reasonable regulations for schools, including a requirement that they shall give instruction in English, is not questioned. Nor has challenge been made on the state's power to prescribe a curriculum for institutions which it supports."

It is true that the last quotation above referred to would be classed, in legal parlance, as dictum.

In the case of *Pierce vs. Society of Sisters, etc.*, the act required the children of the state of Oregon to attend public schools, in which the court said that "the child is not the mere creature of the state, and those who nurture him and direct his destiny have a right, coupled with high duty, to recognize and prepare him for additional obligations."

In the Oregon case, the Nebraska case is referred to without any suggestion or intimation that the dictum therein is not good law.

In the case of *Leeper vs. The State*, reported in 19th Pickle, page 500, where in it was insisted that the Act involved therein was unconstitutional under section eight of Article I of the Constitution of the State of Tennessee, the Supreme Court of Tennessee said that: "That State may establish a uniform series of books to be taught in the schools which it provides and controls seems to be a proposition as evident as that it may provide a uniform system of schools, which we take it is not now an open question."

In deciding the Leeper case the court referred to, with approval the case of the State vs. Hayworth, 122 Indiana,

462, thusly; The reasoning of the court in the case of State vs. Hayworth is so satisfactory and conclusive that we cannot perhaps do better than give a synopsis of it. It was held that such an act does not infringe in the slightest degree upon the right of local self government; that essentially and inferentially the schools in which are educated and trained the children that are to become the rulers of the commonwealth are matters of state, and not local, jurisdiction, that in such matters the state is a unit and the legislature the source of power; that the establishment and control of public schools is a function of the general assembly, both under the Constitution, and because it is a matter of State concern. Being a matter of legislative control, the legislature may abandon one plan and try another, if it sees proper, and courts cannot interfere. It is further pertinently said, that it is impossible to conceive the existence of a uniform system of public schools without powers lodged somewhere to make them uniform, and in the absence of express constitutional provisions the power must necessarily reside in the legislature, and hence, it has the power to prescribe a course of study as well as the books to be used, and how they shall be obtained and distributed, and its discretion as to methods cannot be controlled by the courts. We find neither reason nor authority that suggests a doubt as to the power of the legislature to require a designate series of books to be used in school.

The rule prevailing in Tennessee by which the courts are governed in passing upon the constitutionality of statutes is this: The rule of construction that every intendment and presumption is in favor of the constitutionality of the statute and that every doubt must be solved so as to sustain it; and where it is subject to two constructions, that which will sustain its constitutionality must be adopted.

Under the holdings in the Oregon case and in the Nebraska case and in the Leeper, Tennessee, case, the court

is satisfied that the act involved in the case at bar does not violate the 14th Amendment to the Constitution of the United States, and is therefore pleased to overrule this ground.

The Court, having passed on each ground chronologically, and given the reasons therefor, is now pleased to overrule the whole motion, and require the defendant to plead further.

(Signed) J. T. Raulston, Judge.

State of Tennessee )  
                          )  
                  vs.            )  
                          )  
John T. Scoopes.            )

Violating Anti Evolution Law.

In this cause, the Court after hearing and fully understanding the motion to quash the Indictment in the cause, also the Demurrer to said Indictment, which is in wording the same as the motion, is pleased to overrule the Demurrer for the same reasons.



results. In other words, the State insists that by a fair and reasonable construction of the statute, the real offense provided against the act is to teach that man descended from a lower order of animals, and that when this is accomplished by a fair interpretation and by legal implication, the whole offense is proven. That is, the State says that the latter clause interprets and explains what the legislature meant and intended by the use of the clause, "any theory that denies the story of Divine creation as taught in the Bible."

But the defendant is not content to agree with the State in its theory, but takes issue and says that before there can be any conviction the State must prove two things:

First, that the defendant taught evolution in the sense used in the statute;

Second, that this teaching was contrary to the Bible.

That these are questions of fact; that the proof must show what evolution is, so that the jury may determine whether evolution as taught by the defendant conflicts with the bible; that it is not merely what the defendant said, or what the book taught; and that they cannot do this without evidence. That is, that the defendant must have taught the descent of man from a lower order of animals, and a theory contrary to that of Divine creation as taught by the Bible. That the teaching of either, would be a crime.

Now upon these issues as brought up, it becomes the duty of the Court to determine the question of the admissibility of this expert testimony offered by the defendant.

It is not within the province of the court under these issues to decide and determine which is true, the story of Divine creation as taught in the Bible, or the story of the creation of man as taught by evolution.

If the State is correct in its insistence, it is

immaterial, so far as the results of this case are concerned, as to which theory is true; because it is within the province of the legislative branch, and not the judicial branch, of the government, to pass upon the policy of a statute; and the policy of this statute having been passed upon by that department of the government, this Court is not further concerned as to its policy, but is interested only in its proper interpretation and, if valid, its enforcement.

Let us now inquire what is the true interpretation of this statute. Did the legislature mean that before an accused could be convicted, the State must prove two things:

First, That the accused taught a theory denying the story of Divine creation as taught in the Bible;

Second, That man descended from a lower order of animals.

If the first must be specifically proven, then we must have proof as to what the story of Divine creation is, and that a theory was taught denying that story. But if the second clause is explanatory of the first, and speaks into the act the intention of the legislature and the meaning of the first clause, it would be otherwise.

To illustrate, when the legislature had provided that it shall be unlawful to teach a theory that denies the Divine story as taught in the Bible; and then, by the second clause, merely clarified their intention, and that the real intention as provided by the statute taken as a whole, was to make it unlawful to teach that man descended from a lower order of animals, then there would be no ambiguity and uncertainty as to the meaning of the statute, and as to the offense provided against, as to justify the Court in calling expert testimony to explain.

The Court will seek the aid of ~~the aid of~~ expert evidence only when the issues involve facts of complex nature

that a man of ordinary understanding is not competent and qualified to form an opinion.

In Tennessee an act should be construed so as to carry out the purposes for which it was enacted.

The legislative intent will prevail over the strict letter, and in order to carry into effect its intent, general terms will be limited, and those which are narrow expanded.

In construing a statute we must look to the act as a whole, to the object with which it deals, and the reason and the spirit of the enactment, and thereby, if possible, discover its real purpose. The meaning must be determined, not from the special words in a single sentence or section, but from the act taken as a whole, comparing one section with another, and viewing the legislation in the light of its general purposes.

In the act involved in the case at the bar, if it is found consistent to interpret the latter clause as explanatory of the legislative intent as to the offense provided against, then why call experts. The ordinary, non-expert mind can comprehend the simple language, "descended from a lower order of animals."

These are not ambiguous words or complex terms. "But while discussing these words, by way of parenthesis, I desire to suggest that I believe evolutionists should at least show man the consideration to substitute the word "ascend" for the word "descend.")

In the final analysis this Court, after a most earnest and careful consideration, has reached the conclusion that under the provisions of the act involved in this case, it is unlawful thereby to teach in the public schools of the State of Tennessee the theory that man descended from a lower order of animals. If the Court is correct in this, then the experts would shed no light on the issues.

Therefore, the Court is content to sustain the

motion of the Attorney General to exclude the expert testimony, the purpose of which is to explain the origin of man and of life in this world.

(Signed) J. T. Raulston, Judge.

COURT'S CHARGE TO THE JURY.

Gentlemen of the Jury:

This is a case of the State of Tennessee vs, John Thomas Scopes, wherein it is charged that the accused violated what is commonly known as the anti-evolution statute, the same being Chapter 27 of the Acts of the legislature of 1925, the statute providing that it shall be unlawful for any person to teach in any of the universities, normals, or other public schools of the State, any theory that denies the story of the divine creation of man as taught in the Bible and teach instead thereof that man <sup>is</sup> descended from a lower order of animals.

The indictment in this case is dated at the July Special Term, 1925, and, in part charges that John Thomas Scopes, heretofore on the 24th day of April, 1925, did unlawfully teach in the public schools of Rhea County, Tennessee, which said public schools are supported in part and in whole by the public school fund of the State, a certain theory and theories that denied the story of the divine creation of man as taught in the Bible, and did teach instead thereof that man is descended from a lower order of animals, he the said John Thomas Scopes being at the time and prior thereto, a teacher in the public school of Dayton, in the county aforesaid, against the peace and dignity of the State.

To this charge the defendant has pleaded not guilty and thus are made up the issue for your determination. Before there can be a conviction the State must make out its case beyond a reasonable doubt as to every essential and necessary element of the case. The Court calls the attention of the jury to the wording of the indictment, wherein it is charged that this defendant taught a certain theory or theories that denied the

story of the divine creation of man as taught in the Bible, and taught instead thereof that man descended from a lower order of animals. This statute has been before the Court during the hearing of the case, upon a motion which made it necessary that the Court should construe the statute as to what offense was provided against therein. The Court, after due consideration of the statute, has held that the proper construction is that it is made an offense thereby to teach in the public schools of the State of Tennessee which are supported in whole or in part by the public school fund of the State, that man descended from a lower order of animals. In other words the second clause is explanatory of the first, and interprets the meaning of the legislature; and the Court charges you that in order to prove its case the State does not have to specifically prove that the defendant taught a theory that denied the story of the divine creation of man as taught in the Bible, other than to prove that he taught that man descended from a lower order of animals. Therefore, the Court charges you that if you find that the proof in this case shows that the defendant did teach in the public schools of Rhea County, the same being supported in whole or in part by the public school fund, subsequent to the passage of this statute, and prior to the finding of this indictment, that man descended from a lower order of animals, and if these facts are shown beyond a reasonable doubt, then the defendant would be guilty and should be found so, and you are not concerned as to whether or not this is a theory denying the story of the divine creation of man as taught, for the issues as they have been finally made up in this case do not involve that question.

By the phrase "beyond a reasonable doubt", I do not mean any possible doubt that might arise, or such a doubt as an ingenious mind might conjure up, but by reasonable doubt in legal parlance is meant such a doubt as would prevent your mind resting easy as to the guilt of the defendant.

In determining whether or not his guilt is shown beyond a reasonable doubt you must weigh and consider the evidence, and in doing that you would look to the demeanor of the witnesses on the stand, their opportunities to know the facts concerning which they testify, their respectability or want of respectability if such appears, their interest in the result of the lawsuit or want of interest; their bias, prejudice or leaning to one side or the other, if such appears. Their relationship to any of the parties, and all other facts that might enable you to determine what weight should be given their testimony.

You, gentlemen, are the sole and exclusive judges of the facts and the credibility of the witnesses, and judges of the law under the direction of the Court.

You enter upon this investigation with the presumption that the defendant is not guilty of any offense, and this presumption stands as a witness for him until it is overcome by competent and credible proof.

There are different methods by which witnesses are impeached. One is by showing that they are unworthy of belief, by those who know them best; another method is by showing that a witness has made contradictory statements as to material facts involved in the case, concerning which he gave testimony. Another is to involve the witness in discrepancies upon the witness stand, by rigid and close cross examination.

When a witness is once impeached, he stands impeached throughout the trial, but this does not mean that he did not swear the truth. This is a matter for you to determine but the impeaching process is a circumstance which you will take into consideration in the determining what weight you will give his testimony.

If there are conflicts in the statements of the different witnesses, it is your duty to reconcile them if you can, for the law presumes that each witness has sworn the truth. But

if you cannot reconcile their testimony, the law makes you the sole and exclusive judges of the credibility of the witnesses and the weight to be given their testimony.

In this case the defendant did not go on the stand. Under our Constitution and laws he has the right to either testify or not testify as he sees proper, and his failure to testify creates no presumption of his guilt, but should be considered for no purpose in determining whether or not he is guilty.

Under the provisions of the statute in this case, a person who violates the same may be punished by a fine of not less than \$100.00 nor more than \$500.00. If after a fair and honest investigation of all the facts you find the defendant guilty and find that his offense deserves a greater punishment than a fine <sup>of</sup> \$100.00, then you must impose a fine not to exceed \$500.00 in any event. But if you are content with a \$100.00 fine, then you may simply find the defendant guilty and leave the punishment to the Court.

But if the proof fails to show his guilt beyond a reasonable doubt, you should acquit the defendant and your verdict should be not guilty.

Under our Constitution and laws the jury can have no prejudice or bias either way, but you should search for and find the truth, and the truth alone, and bring into this Court such a verdict as you think truth dictates and justice demands.

(Signed) J. T. Raulston.

VERDICT OF THE JURY.

State of Tennessee ) No. 5232.  
 )  
 vs. ) Violating Anti Evolution Law.  
 )  
 John T. Scopes )

In this cause came the Attorney General and the Defendant in person and being represented by counsel, and this cause was tried upon the defendant's plea of not guilty, before the Court and the following jury, to wit: W. F. Robinson, J. W. Dagley, J. W. Riley, W. G. Taylor, R. L. Gentry, J. R. Thompson, W. D. Smith, J. B. Goodrich, J. H. Bowman, W. G. Day, R. F. West, and J. S. Wright who being elected, tried and sworn to well and truly the issues joined, on their oaths do say they find the defendant guilty as charged in the indictment and leave it to the Court to assess punishment.

It is therefore adjudged by the Court that for said offense the defendant shall pay or secure a fine of \$100.00, and all costs of the cause, for which execution may issue.

The defendant thereupon made it known that he would file a motion for a new trial, which he is permitted by the Court to do.

MOTION FOR NEW TRIAL.

STATE OF TENNESSEE )  
                          )  
                  VS.      )  
                          )  
JOHN THOMAS SCOPES )

The defendant moved the Court for a new trial in the above entitled cause, upon the following grounds;

1.

The evidence preponderates against the guilt of the defendant and in favor of his innocence.

2.

The Court erred in overruling defendant's motion to quash the indictment, which motion was based on the fact that the indictment was not specific enough to put the defendant on notice of the offense with which he was charged, and the statute upon which the indictment was based was void for indefiniteness and lack of certainty.

3.

The Court erred in overruling defendant's motion to quash and demurrer to the indictment, said demurrer and motion being based upon the contention that the Act of the legislature under which the defendant was indicted in this case was unconstitutional and in conflict with the constitution of Tennessee and the constitution of the United States in that it did violate Sec. 17 and article 2, and Sec. 12 and article 11, and Sec. 18 and article 2, and Sec. 3 and article 1, and Sec. 9 and article 1, and Sec. 14 and article 1, and Sec. 8 and article 2, and Sec. 2 and article 2, of the constitution of Tennessee, and that it *is* [not] in conflict with Sec. 1 of the 14th amendment of the constitution of the United States.

4.

The Court erred in excluding the testimony of the defendant's witnesses who were sworn and tendered as witnesses and whose names are as follows:

Rev. Walter Whittaker, Dr. Shailer Mathews, Maynard M. Metcalf, Herman Rosenwasser, Dr. <sup>a</sup>Fay Cooper-Cole, Dr. Kirfley Mather, Dr. W. C. Curtis, Jacob S. Lipman, Luther Burbank, Chas. Hubbard Judd, Horatio Hackett Newman. By said witnesses the defendant expected to prove and could prove that the teaching of evolution as taught by defendant in Hunter's Biology, a credited text book of Tennessee, was not in conflict not in violation of the Statute under which he was indicted and prosecuted in this case, and by agreement of counsel and with the permission of the Court the evidence of said witnesses showing what they would have testified if allowed to give their testimony in the case is made part of the record in this cause.

5.

The Court erred over the objection of the defendant who opened Court with prayer by ordained ministers at the beginning of each days session of Court.

6.

The Court erred in refusing to grant defendant's motion and preemptory instructions upon the close of the testimony for the State.

7.

The Court erred over the objection of the defendant to the introduction by the State of the King James version of the Bible and treated it as the Bible authorized by law as a true and correct copy of the Holy writings.

8.

The Court erred in excluding the testimony of William Jennings Bryan from the jury, and attempting to expunge his testimony so that the Appellate Court would not have the testimony of the witness before them and of course could not pass upon the question of competency. The Court also erred in <sup>not</sup> permitting defendant's counsel to further examine the witness upon the convening of Court on the following morning and preempt-

torily voted that the testimony of the witness was incompetent, and refused to allow counsel to be heard on the question of the competency of the testimony.

(Signed) John R. Neal,

Frank B. McElwee,  
Attys. for Defendant.

Filed July 21st, 1925.

E. E. Ewing, Clerk.

The Court having heard and considered the above motion for a new trial is pleased to overrule same.

To the action of the Court in overruling defendant's motion for a new trial the defendant excepts in law and in fact and prays an appeal to the next term of the Supreme Court, at Knoxville, Tennessee.

The Court is pleased to grant said appeal upon defendant entering into bond with good and solvent security in the sum of \$500.00, for his personal appearance at the next term of the Circuit Court of Rhea County, Tennessee, after his appeal is heard and adjudicated by the Supreme Court.

Upon motion the Court is pleased to grant defendant thirty (30) days from July 21st, 1925, in which to prepare, perfect, and file his bill of exceptions.

Thereupon Court adjourned until Court in course.

J. T. Raulston, Judge.



B I L L O F C O S T .

State Tax \$5.00, State Expense Fee \$5.00; -----	\$10.00
County Tax \$5.00; County " " 5.00; -----	10.00
Attorney General Fee; -----	5.00
E.B.Ewing, Clerk Fees: Fil. Bond 25¢; Fil. J.P. Papers 25¢; Dkg. 30¢; Fil. In. 25¢; Rec. same 10¢; Issg. 19 Spas. \$1.90; Jury 50¢; Fil. Mo. to quash In. 25¢ Rec. 1650 words \$1.65; Fil. Dem. 25¢; Rec. same 1650 Wds. \$1.65; 2 orders 50¢; Copy on minutes order overruling Mo. to Quash In. and Demurrer 7000 Wds. \$7.00; Fil Mo. to exclude Expert Tes. 25¢; Cop. on Min. order Ex. same 1550 Wds. \$1.55; Mo. & Or. new trial 25¢; Rec. same 50¢ order refusing same 25¢; Tran. to Su. Ct. 270M Wds. ✓ \$270.00, Order of Appeal & Bond 75¢, Seal 50¢, Ex. \$1., \$291.75 - 16.10	
<i>Bill of Ex. 25¢, Paid Express on Bill of Ex. 97¢</i>	1.22
R. B. Harris, Shff. Arrest \$2.00; Bond 25¢, Ex. 10 Spas. \$2.50; -----	4.75
W. T. Boyd, D.S. Ex. 9 Spas. -----	2.25
A. C. Benson, J.P. Aff. & War. \$1.00; Dkg. 50¢; Judg. \$1.00; Spas. 40¢; -----	2.90
Howard Morgan, Wit. 4 days, -----	4.00
Maurice Stout, " 4 " -----	4.00
James Benson, " 4 " -----	4.00
Jack Hudson, " 4 " -----	4.00
Total, -----	\$343.87

*#16.10 of above trans. cost to be charged to County. Bal. to John Thomas Scopes. Transcript cost as County. Transcript cost #16.10 ✓*

*Cost as Scopes: Order of Appeal Bond, ✓  
 270.00 + 10 - 16.10 = Transcript = 253.90  
 Express = .97  
 \$254.87*

I N D I C T M E N T .

State of Tennessee

Circuit Court

County of Rhea

July Special Term, 1925.

The Grand Jurors for the State aforesaid, being duly summoned, elected, empanelled, sworn and charged to inquire for the body of the county aforesaid, upon their oaths present:

That John Thomas Scopes heretofore on the 24th day of April, 1925, in the county aforesaid, then and there, unlawfully did wilfully teach in the public schools of Rhea County, Tennessee, which said public schools are supported in part and in whole by the public school fund of the state, a certain theory and theories that deny the story of the Divine creation of man as taught in the Bible, and did teach instead thereof that man has descended from a lower order of animals, he, the said John Thomas Scopes, being at the time, and prior thereto, a teacher in the public schools of Rhea County, Tennessee, aforesaid, against the peace and dignity of the State.

(Signed) A. T. STEWART,  
Attorney General.

(ENDORSED)

No. 5232.

State of Tennessee

vs.

Jno. Thos. Scopes.

Indictment for Violating Anti-Evolution Law.

Witnesses: Howard Morgan, Jas. Benson, Jack Hudson,

were sworn during open Court before the Grand Jury to give evidence on the within indictment, this the 10 day of July, 1925.

John Rose,

Foreman of the Grand Jury.