

APPEALS--From Justice Court to Circuit Court--Case to be
tried De Novo.

April 6, 1937

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Hon. Douglas Mahnkey
Prosecuting Attorney
Taney County
Forsyth, Missouri



Dear Sir:

We have your request of April 5, 1937, for an
opinion which reads as follows:

"I have just obtained a conviction in
Justice Court for disturbing religious
worship. The case had been continued
once and then a change of venue taken
from the Township. When the trial day
came defendant's attorney filed motion
for continuance on the ground that due
to no fault of defendant important
witnesses for defense are not present
and had not been subpoenaed. Justice
overruled all these motions on the ground
that defendant had not used due dili-
gence, having had twenty days to get
witnesses. We went to trial and obtained
a conviction.

Defense attorney appealed to Circuit Court.
He informs me that he will argue the motions
anew before the Circuit Court and that the
Circuit Court has the right to send the
case back to the original Justice of the
Peace to be heard anew.

I do not believe that to be the law or pro-
per procedure. I maintain the case is tried
de novo in the Circuit Court regardless
of any irregularities in the Justice Court."

In answer to your letter we refer you to Section 3448, Laws of Missouri 1931, page 202, which refers to appeals from the Justice Court in misdemeanor cases to the Circuit Court. This Section provides that the appellant must enter into a recognizance, conditioned

"that the defendant shall appear at the next term and from day to day and term to term thereafter, of the said circuit court, and prosecute his appeal with due diligence to a decision, and obey every order, sentence and judgment,*".

A complete scheme of transferring the entire case and proceedings to the Circuit Court is found in the statutes. Section 3451 R. S. Missouri 1929, requires the justice of peace to cause all material witnesses to enter into a recognizance, conditioned for their appearance to testify in the Circuit Court.

Section 3452 provides that when the appeal is properly lodged in the Circuit Court the cause shall be heard on the merits. It shall be triable at the first term of the Circuit Court, and the costs of both courts unless otherwise ordered by the circuit court, shall abide the event of the trial in the Circuit Court.

Section 3453 provides that if the judgment be affirmed or if upon a trial in the Court, the defendant shall be convicted and execution shall issue. The cases in which the judgment would be affirmed are those in which the defendant absents himself or otherwise fails to appear for trial. In such cases the judgment is to be affirmed. This statute was so construed in *City vs. Murphy*, 24 Mo. 41. If the defendant appears in the Circuit Court then the case is to be tried de novo. *State vs. Gowing*, 27 Mo. App. 389. Errors committed in the Justice Court are not reviewable in the Circuit Court on Appeal. Other remedies may be available to the defendant at the time the errors are committed. *State vs. Brumley*, 53 Mo. App. 126.

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Section 3448 as amended by laws 1931, page 202, provides that upon an appeal in a misdemeanor case from the Justice Court to the Circuit Court

"such appeal shall operate as a stay of execution thereon, until trial of the case anew has been had in the Circuit Court."

It is therefore the opinion of this office that appeals from the Justice of Peace Courts to the Circuit Courts in misdemeanor cases should be tried de novo, without regard to any errors that may have been committed by the Justice of Peace in the trial of the case.

Respectfully submitted,

FRANKLIN E. REAGAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General

FER:MM