

8592

No. _____

Supreme Court of Illinois

Isam E. Wallace

vs.

People & Co.

71641  7

In the Supreme Court Just Grand
Jurisdiction.

James E. Wallace, Plaintiff in error

v
The People of the State of Illinois, Defendant in error.

Indict for forgery.

Error to Monroe County.

Attest
J. H. Underwood

Thallac
refinors
The People
of the error

Receipt

July 11th 1861 -
St. Johnston MS

ABSTRACT.

ISAM E. WALLACE, PLAINTIFF IN ERROR, }
VS. } INDICTMENT FOR FORGERY.
THE PEOPLE & C., DEFENDANT IN ERROR, }

1 Abstract of Indictment, to-wit:
State of Illinois, Monroe County, &c.

The Grand Jurors, &c., on their oaths present that I. E. Wallace, of Monroe Co., on the 13th day of September, 1860, at &c., unlawfully willfully and feloniously, &c., "did then and there forge a certain certificate, *purporting* to be a certificate of qualification, *purporting* to be issued by " John H. Bremer, School Commissioner of Monroe County, aforesaid to him the said, I. E. W.,
2 " which said false forged certificate *purported* to authorize the said I. E. W., to keep a School in " any of the School districts, and draw the public school fund in any School district in said coun- " ty of Monroe, in which he the said I. E. W., should be employed by the School directors of any " School district for the space of two years, from the date of said forged certificate. The said *date* " and ~~substance~~ ^{substance} of which forged certificate is some day in the month of September aforesaid, the " said date, ~~of~~ ^{of} which said forged certificate is unknown to the jurors aforesaid, the said *forged cer-* " *tificate* being *lost*, with intent thereby, then and there unlawfully &c., to cheat, defraud William " Rusk, John Anderson and John Dertrick, School directors of school district, No. 6. towns 4 & 5. " S. R. 9. W. in said County of Monroe. Contrary &c."

AMOS WATTS,
STATES' ATTORNEY.

MOTION TO QUASH.

4 On 1st day of term Plaintiff in error moved the Court to quash said Indictment. 1st, because said indictment does not aver the forging hand-writing of any one. 2d, because in the averment of *intent* it is uncertain.

3d. Because it is uncertain whether said certificate was issued by an individual or an officer.

4th. Because the Grand Jurors do not pretend to aver the substance of said Certificate.

5th. Because said certificate as described, could not impose upon mere individuals and for other insufficiencies; which motion was overruled and Plaintiff in error then and there excepted at the time &c.

TRIAL.

On the trial, John Anderson called as a witness for prosecution, who testified: That on 1st
5 Sept. 1860, said Rusk, Detrick and himself were School directors of said district. That I. E. W., about that time, applied to him for employment to teach a school, that then he had no certificate of qualification from School Com'r. of Monroe Co., to teach a school, but expected a special certificate from School Com'r. of Randolph Co., that he told him the Directors would not employ him, unless he could present a certificate from the School Com'r of Monroe Co.— That afterwards and as near as he could remember, said I. E. W., in the last week of Sept. of that year, presented to him, what he took to be a Certificate of qualification to teach a school.—
5 That he did not remember its date, nor how it was signed, but remembered it certified to teach reading, writing and history. Could not swear that Bremer's name was to it—it was written with blue ink. He told said I. E. W., when he first applied, that if he got the certificate of the School Com'r of Monroe Co., the directors would employ him.

That Def't., said Bremer lived near Waterloo, and he had to go up for it, and been put to much trouble to get it. The Directors employed him to teach in said District. That he did not know the hand-writing of Pl'tff. in error, at the time he presented said Certificate, was not acquainted with his hand-writing, but from what he has seen since he believes it to be in his hand-writing. This occurred in Monroe County.

6 Wm. Rusk next called testified: That Defendant (I. E. W.) came to him and showed him the certificate referred to by Anderson and said he had shown it to Anderson. That he did not examine it closely—had it in his hand, and handed it back to him. That he could not remember *its date or whether dated*, but said it was signed or *purported* to be signed by J. H. Bremer, (this witness was particularly interrogated as to the signature,) said same was written in blue ink. He was not acquainted with his handwriting then, but from what he has seen since of his writing he believes it to be his. That at that time the persons named as directors were such That said District was a regular corporation. That in the employment of I. E. W. as a teacher their funds individually, was not in the least affected. That Defendant taught school about four months of the six months, and he never heard that he was objected to on the ground of qualification. That he would not have been employed had he not presented a general certificate of qual-

ifications from the school Commissioner of Monroe Co. That afterwards Defendant said he had lost it. This took place in Monroe county.

John H. Breemer sworn says: That he was School Commissioner of Monroe county in 1830, and is still. That he never saw Plaintiff in error until about four weeks ago. That he never issued a certificate to him to teach school. That he never issued any such unless special applications of Directors without the written recommendation of Examiners. That he never issued any to him two years.

- 7 Defendant proved by Chenewith: That he had heard witness Anderson say that he thought he could know the paper (certificate) if he saw it. But then said that Anderson said he did not remember whether it was writtten with blue ink or not. He further testified that he was acquainted with the general character of I. E. W., and that it was good. S. P. Taggart and John Kearney proved also his good character. Jesse Amos, for Defendant (I. E. W.) testified that he had seen certificates executed by him which were not countersigned by examiner.

This was all the evidence.

- 8 The counsel for Plaintiff in error requested the court to instruct the jury.

1st. That unless the jury believe from the evidence that the certificate as described in the indictment is proved to have been forged by Defendant, you should find the Defendant not guilty.

2d. That if the jury entertain a reasonable doubt which was to be defrauded; the said Rusk, Detrick and Anderson, or whether it was forged with intent to defraud the *School District* named in the indictment you should find Defendant not guilty.

3rd. That it is incumbent on the prosecution to prove, every material averment in the indictment describing the forged instrument as charged, and if you find that the prosecution has failed to prove the same "substantial" as alledged, you should find the Defendant not guilty.

4th. That in a criminal case, where there is a reasonable doubt, the proof of good character for honesty is evidence for your consideration in favor of defendant.

To the refusal to give the second and qualification third instruction, by inserting the words "material," "forged" and "substantial" as therein the Defendant at the time excepted.

Verdict, guilty, &c.,

Moved for new trial, and in arrest of judgment.

FIRST, THE CAUSES FOR NEW TRIAL:

- 1st. Because the verdict is Contrary to the Law.
2d. Because said finding of the jury is Contrary to the evidence.
3rd. Because said verdict is Contrary to both law and evidence.
4th. Because the evidence was insufficient to support the verdict.
5th. Because the Court refused the second instruction asked by Defendant.
6th. Because the Court refused to give the 3rd Instruction as asked, but amended the same in the form stated above.
7th. Because the Court against the consent of the Defendant, discharged Uriah Harlow as a Juror.
8th. Because the proof varied from the allegation in the indictment, and described a different paper, than the one described in the indictment.

9th. Because the Evidence failed to prove the instrument as described in the indictment.

10th. Because two of the Jurors were disqualified by Law from serving on the Jury.

And Defendant by his Counsel moves the Court in arrest of Judgment for the Causes following:

- 1st. Because the said indictment does not alledge that Def't. forged the hand-writing of anyone.
2d. Because the said indictment is defective in this that it is uncertain in avering the *intent*, whether to defraud the said Anderson, Rusk and Dietrick, or whether the School district No. 6. Township No. 4 and 5. S. R. 9. W.

3rd. Because the said indictment is uncertain whether said Certificate was issued as an individual or an officer.

4th. Because it is alleged in said indictment, that the Grand Jury did not know the substance of said instrument and for other defects apparent on the face of said indictment.

1st. The Court erred in overruling the motion to quash said indictment.

2d. The Court erred in overruling the motion of Plaintiff in error for new trial.

3d. The Court erred in overruling Plaintiffs' motion in arrest of Judgement.

4th. The Court erred in refusing the Plaintiff's second instruction.

4th. The Court erred in modifying Plaintiff's third instruction.

ISAM E. WALLACE,

By UNDERWOOD & O'MELVENEY, his Att'ys.

Refused

Qualified

in " "

Att'ys.

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon --- November Term, A. D., 1861.

ISHAM E. WALLACE, *Plaintiff in Error,*

vs.

THE PEOPLE, &c., *Defendant in Error.*

INDICT. FOR FORGERY.

I. THE Court ought to have quashed the Indictment on motion: it is bad.

1st. Because the instrument being averred to be lost, it is still essential that its "*substance and effect*" should be stated, (Wharton's Prac. p.) and in this case the jurors on the face of the indictment say they do not know its substance nor date.

2d. The indictment is based upon the following clause of Sec. Crim. Code, to-wit: "Or other authentic matter of public nature." And 1st, At the passage of that section of the law, it is believed no "school certificate of qualification" was then in existence,—and therefore is not comprehended in that section. 2d, It is submitted that the paper described, as described is not "an authentic matter of public nature," because it was issued by John H. Breemer, *school commissioner*, which addenda is descriptive of the individuality and identity of Breemer, and is not equivalent to describing the certificate as an official paper.

3d. Because the instrument as described is such that it could have imposed upon no one but a *school district*, as it "authorized Wallace to teach a school in any school district, and draw the public funds." The averment is, that such a paper was forged with intent to cheat and defraud Anderson Rusk and Dutrick. *Wharton's Prac. 264. (P)*

II. The Court ought to have granted the motion for new trial.

1st. Because the indictment averred the date of the paper to be some day in September, 1860. No witness was able to say it bore any date whatever. The date is material as description, and essentially so, for by the law such certificates become void after the expiration of two years from date. This averment was without proof. Whether dated or not is unknown by the proof. *Scots v. R. State, 449. See 50.*

2d. Because indictment charges said paper to purport to be issued by John H. Breemer, (school commissioner of Monroe county.) The proof on this point was that it was or purported to be issued by J. H. Breemer, and no proof was offered that they were the same person. This is clearly a variance in an essential part of the description. Purport, Wharton's Prac. ~~364~~ Variance, *ibid.* 131, 133 and 134.

3d. Because by such certificate it could not nor did not impose on Anderson Rusk and Dutrick. They swear that in the premises their funds could in no wise be affected.

4th. Because prosecution failed to prove that defendant's name was *Isam E. Wallace.*

5th. Because Court refused 2d instruction, and qualified the 3d instruction as shown in the record, and because the instruction is not law.

H. K. S. O'MELVENY,
WM. H. UNDERWOOD,
For Plaintiff in Error.

Brief

Wallace

v
The People

is not law.
 instruction as shown in the record, and because the
 2d. Because Court refused 2d instruction, and because the
 3d. Because prosecution failed to prove that defendant's name was
 no wife be affected.
 4th. Because
 5th. Because by such certificate it could not be proved that
 in an essential part of the description. Pursuant to the
 point was that it was or purported to be issued by J.
 John H. Freeman, (school commissioner of Monroe county.
 2d. Because indictment charges said paper to purport to be issued by
 the proc. 2000-10-14-1861.
 This averment was without proof. Whether dated or not is unknown by
 each certificate become void after the expiration of two years from date
 ever. The date is material as to description, and essentially so for the law
 day in September, 1860. No witness was able to say it bore any date what-
 1st. Because the indictment averred the date of the paper to be some
 II. The Court ought to have granted the motion for new trial.

Filed Nov - 14 - 1861.
 Attest
 J. H. Freeman

For Plaintiff in Error.
 W. H. UNDERWOOD,
 H. K. & OMBREVENY.

Canadian Office Print, M. Vernon

ABSTRACT.

ISAM E. WALLACE, PLAINTIFF IN ERROR, }
 vs. } INDICTMENT FOR FORGERY.
 THE PEOPLE & C., DEFENDANT IN ERROR, }

1 Abstract of Indictment, to-wit:
 State of Illinois, Monroe County, &c.

The Grand Jurors, &c., on their oaths present that I. E. Wallace, of Monroe Co., on the 13th day of September, 1860, at &c., unlawfully willfully and feloniously, &c., "did then and there forge a certain certificate, *purporting* to be a certificate of qualification, *purporting* to be issued by " John H. Bremer, School Commissioner of Monroe County, aforesaid to him the said, I. E. W.,
 2 " which said false forged certificate *purported* to authorize the said I. E. W., to keep a School in " any of the School districts, and draw the public school fund in any School district in said coun- " ty of Monroe, in which he the said I. E. W., should be employed by the School directors of any " School district for the space of two years, from the date of said forged certificate. The said *date* " and ~~substance~~ ^{substance} of which forged certificate is some day in the month of September aforesaid, the " said date of which said forged certificate is unknown to the jurors aforesaid, the said *forged cer-* " *tificate being lost*, with intent thereby, then and there unlawfully &c., to cheat, defraud William " Rusk, John Anderson and John Dertrick, School directors of school district, No. 6. towns 4 & 5. " S. R. 9. W. in said County of Monroe. Contrary &c."

Purport described matter

AMOS WATTS,
 STATES' ATTORNEY.

MOTION TO QUASH.

4 On 1st day of term Plaintiff in error moved the Court to quash said Indictment. 1st, because said indictment does not aver the forging hand-writing of any one. 2d, because in the averment of *intent* it is uncertain.

3d. Because it is uncertain whether said certificate was issued by an individual or an officer.

4th. Because the Grand Jurors do not pretend to aver the substance of said Certificate.

5th. Because said certificate as described, could not impose upon mere individuals and for other insufficiencies; which motion was overruled and Plaintiff in error then and there excepted at the time &c.

Official acts

TRIAL.

On the trial, John Anderson called as a witness for prosecution, who testified: That on 1st
 5 Sept. 1860, said Rusk, Detrick and himself were School directors of said district. That I. E. W., about that time, applied to him for employment to teach a school, that then he had no certificate of qualification from School Com'r. of Monroe Co., to teach a school, but expected a special certificate from School Com'r. of Randolph Co., that he told him the Directors would not employ him, unless he could present a certificate from the School Com'r of Monroe Co.— That afterwards and as near as he could remember, said I. E. W., in the last week of Septr. of that year, presented to him, what he took to be a Certificate of qualification to teach a school.—
 5 That he did not remember its date, nor how it was signed, but remembered it certified to teach reading, writing and history. Could not swear that Bremer's name was to it—it was written with blue ink. He told said I. E. W., when he first applied, that if he got the certificate of the School Com'r of Monroe Co., the directors would employ him.

That Def't., said Bremer lived near Waterloo, and he had to go up for it, and been put to much trouble to get it. The Directors employed him to teach in said District. That he did not know the hand-writing of Pl'tff. in error, at the time he presented said Certificate, was not acquainted with his hand-writing, but from what he has seen since he believes it to be in his hand-writing. This occurred in Monroe County.

6 Wm. Rusk next called testified: That Defendant (I. E. W.) came to him and showed him the certificate referred to by Anderson and said he had shown it to Anderson. That he did not examine it closely—had it in his hand, and handed it back to him. That he could not remember *its date or whether dated*, but said it was signed or *purported* to be signed by J. H. Bremer, (this witness was particularly interrogated as to the signature,) said same was written in blue ink. He was not acquainted with his handwriting then, but from what he has seen since of his writing he believes it to be his. That at that time the persons named as directors were such That said District was a regular corporation. That in the employment of I. E. W. as a teacher their funds individually, was not in the least affected. That Defendant taught school about four months of the six months, and he never heard that he was objected to on the ground of qualification. That he would not have been employed had he not presented a general certificate of qual-

ifications from the school Commissioner of Monroe Co. That afterwards Defendant said he had lost it. This took place in Monroe county.

John H. Breemer sworn says: That he was School Commissioner of Monroe county in 1860, and is still. That he never saw Plaintiff in error until about four weeks ago. That he never issued a certificate to him to teach school. That he never issued any such unless special applications of Directors without the written recommendation of Examiners. That he never issued any to him two years.

7 Defendant proved by Chenewith: That he had heard witness Anderson say that he thought he could know the paper (certificate) if he saw it. But then said that Anderson said he did not remember whether it was written with blue ink or not. He further testified that he was acquainted with the general character of I. E. W., and that it was good. S. P. Taggart and John Kearney proved also his good character. Jesse Amos, for Defendant (I. E. W.) testified that he had seen certificates executed by ^{Breemer} ~~him~~ which were not countersigned by examiner.

This was all the evidence.

8 The counsel for Plaintiff in error requested the court to instruct the jury.

1st. That unless the jury believe from the evidence that the certificate as described in the indictment is proved to have been forged by Defendant, you should find the Defendant not guilty.

2d. That if the jury entertain a reasonable doubt which was to be defrauded; the said Rusk, Detrick and Anderson, or whether it was forged with intent to defraud the *School District* named in the indictment you should find Defendant not guilty.

3rd. That it is incumbent on the prosecution to prove, every material averment in the indictment describing the forged instrument as charged, and if you find that the prosecution has failed to prove the same "substantial" as alleged, you should find the Defendant not guilty.

4th. That in a criminal case, where there is a reasonable doubt, the proof of good character for honesty is evidence for your consideration in favor of defendant.

To the refusal to give the second and qualification third instruction, by inserting the words "material," "forged" and "substantial" as therein the Defendant at the time excepted.

Verdict, guilty, &c.,

Moved for new trial, and in arrest of judgment.

FIRST, THE CAUSES FOR NEW TRIAL:

1st. Because the verdict is Contrary to the Law.

2d. Because said finding of the jury is Contrary to the evidence.

3rd. Because said verdict is Contrary to both law and evidence.

4th. Because the evidence was insufficient to support the verdict.

5th. Because the Court refused the second instruction asked by Defendant.

6th. Because the Court refused to give the 3rd Instruction as asked, but amended the same in the form stated above.

7th. Because the Court against the consent of the Defendant, discharged Uriah Harlow as a Juror.

8th. Because the proof varied from the allegation in the indictment, and described a different paper, than the one described in the indictment.

9th. Because the Evidence failed to prove the instrument as described in the indictment.

10th. Because two of the Jurors were disqualified by Law from serving on the Jury.

And Defendant by his Counsel moves the Court in arrest of Judgment for the Causes following:

1st. Because the said indictment does not alledge that Def't. forged the hand-writing of anyone.

2d. Because the said indictment is defective in this that it is uncertain in avering the *intent*, whether to defraud the said Anderson, Rusk and Dietrick, or whether the School district No. 6. Township No. 4 and 5. S. R. 9. W.

3rd. Because the said indictment is uncertain whether said Certificate was issued as an individual or an officer.

4th. Because it is alleged in said indictment, that the Grand Jury did not know the substance of said instrument and for other defects apparent on the face of said indictment.

1st. The Court erred in overruling the motion to quash said indictment.

2d. The Court erred in overruling the motion of Plaintiff in error for new trial.

3d. The Court erred in overruling Plaintiffs' motion in arrest of Judgement.

4th. The Court erred in refusing the Plaintiff's second instruction.

4th. The Court erred in modifying Plaintiff's third instruction.

ISAM E. WALLACE,

By UNDERWOOD & O'MELVENEY, his Att'ys.

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

At Mount Vernon----November Term, A. D., 1861.

ISHAM E. WALLACE, *Plaintiff in Error,*

vs.

THE PEOPLE, &c., *Defendant in Error.*

INDICT. FOR FORGERY.

I. THE Court ought to have quashed the Indictment on motion: it is bad.

1st. Because the instrument being averred to be lost, it is still essential that its "*substance and effect*" should be stated, (Wharton's Prac. p.) and in this case the jurors on the face of the indictment say they do not know its substance nor date.

2d. The indictment is based upon the following clause of Sec. 73 Crim. Code, to-wit: "Or other authentic matter of public nature." And 1st, At the passage of that section of the law, it is believed no "school certificate of qualification" was then in existence,—and therefore is not comprehended in that section. 2d, It is submitted that the paper described, as described is not "an authentic matter of public nature," because it was issued by John H. Breemer, *school commissioner*, which addenda is descriptive of the individuality and identity of Breemer, and is not equivalent to describing the certificate as an official paper.

3d. Because the instrument as described is such that it could have imposed upon no one but a *school district*, as it "authorized Wallace to teach a school in any school district, and draw the public funds." The averment is, that such a paper was forged with intent to cheat and defraud Anderson Rusk and Dutrick. *Wharton's Prac. 264. (f)*

II. The Court ought to have granted the motion for new trial.

1st. Because the indictment averred the date of the paper to be some day in September, 1860. No witness was able to say it bore any date whatever. The date is material as description, and essentially so, for by the law such certificates become void after the expiration of two years from date. This averment was without proof. Whether dated or not is unknown by the proof. *Scale Statute, Sec 449, Sec 50.*

2d. Because indictment charges said paper to purport to be issued by John H. Breemer, (school commissioner of Monroe county.) The proof on this point was that it was or purported to be issued by J. H. Breemer, and no proof was offered that they were the same person. This is clearly a variance in an essential part of the description. Purport, Wharton's Prac. 133; Variance, *ibid.* 131, 133 and 134.

3d. Because by such certificate it could not nor did not impose on Anderson Rusk and Dutrick. They swear that in the premises their funds could in no wise be affected.

4th. Because prosecution failed to prove that defendant's name was *Isam E. Wallace.*

5th. Because Court refused 2d instruction, and qualified the 3d instruction as shown in the record, and because the *4th* instruction is not law.

H. K. S. O'MELVENY,
WM. H. UNDERWOOD,
For Plaintiff in Error.

Wallace
vs
The People

The People

Brief
of
Maintiff

Julius Nov. 14 - 1861 -
N. Johnston City

This indictment was without proof. Whether dated or not is immaterial for such certificates become void after the expiration of two years from date over. The date is material as description, and essentially so for the law day in September, 1860. No witness was able to say it bore any date what-
1st. Because the indictment averred the date of the paper to be some
11. The Court ought to have granted the motion for new trial.

is not law.

Because Court refused to instruct, and directed the jury to find the

For Plaintiff in Error.
W. H. UNDERWOOD,
H. K. O'NEILL.

Original Case filed in Court

45 - 25

Wallace

is

People

1861

Certified on 500

8592