

8635

No. \_\_\_\_\_

# Supreme Court of Illinois


Wm. Scott

---

vs.

people

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71641  7

William Scott  
vs. Murder - Error from Pulaski  
The People of County Ch. Court, April Term A.D. 1858

Syman S. Smith, Thomas M. White and E. B. Watkins  
counsel for Appellant rely upon the following points to  
reverse the judgment and set aside the verdict of  
the Court below in this case:-

1<sup>st</sup>. The refusal of the Circuit Court Judge to  
quash the indictment upon motion of  
Deft's counsel, for reasons that the names of  
the witnesses were not upon the back of said  
indictment, nor was there an endorsement of  
"a true bill" upon the back of said indictment,  
as will appear from the record. Nor does the  
record show that the indictment against  
the Defendant has returned by the grand jury  
properly authorized.

2<sup>nd</sup>. That the indictment in itself is in-  
sufficient and defective.

3<sup>rd</sup>. The record does not show that the jurors  
were empannelled and sworn to "try the cause" then  
pending. The oath administered was the oath that  
is administered to witnesses, not to jurors.

4<sup>th</sup>. The record does not show that the jury  
, after hearing the testimony, retired to deliberate  
upon a verdict.

5<sup>th</sup>. The instructions given by the Court as asked

by the people's Attorneys, were erroneous in many respects,  
1<sup>st</sup>. They were given in the case of "The People vs. Thomas  
Scott," when it was William Scott upon trial. 2<sup>nd</sup>.  
The fourth instruction tells the jury that the Deft.  
Scott did strike a blow, thus deciding a point  
in evidence, which the jury alone should have  
decided. The instruction misled the jury. The  
testimony in the case was conflicting. One witness  
swore that Deft. Scott struck deceased the  
fatal blow, and the wife of deceased swore that  
deceased's dying declaration was that "Cook killed  
him." The jury should have been permitted to decide  
whether or not Scott did strike; but the instruction  
tells them that he did strike, and that they can  
only consider, whether it was done deliberately or  
not. The jury should have been permitted to weigh  
the evidence, 3<sup>rd</sup>. - The seventh instruction is palpably  
wrong. It is opposed to all law, all reason and  
all humanity. That instruction tells the jury that  
"while Cook and the deceased were engaged in  
a difficulty, if Scott interfered and struck the  
deceased with the said handle of a buck-saw  
in manner and form as charged in the indictment,  
and thereby inflicted a mortal wound upon said  
deceased, even though the deceased may have been  
passively struck in the said conflict <sup>with</sup> mortal wound by  
the said Jas. S. Cook, provided you believe from the  
evidence beyond a reasonable doubt, that the death  
of deceased was the result of those wounds." Such  
<sup>you must find Deft. Scott guilty.</sup>

could only be the law, ~~and~~ if Scott was there  
\* struck the blow for the purpose of aiding  
and abetting Cook. If Cook and decaud had a  
difficulty and Cook and decaud then on account  
of said difficulty had a fight, and Cook struck  
decaud; and after said striking defendant  
Scott came up, and owing to another and  
different difficulty between himself and decaud  
he struck decaud, he is not responsible for the  
acts of Cook; and the jury should have been  
permitted to decide whether or not Scott ~~was~~ gave  
the blow for an offence of his own, or to aid  
and abet Cook. The instruction prevents it.  
4<sup>th</sup> - The eighth instruction is as erroneous as the seventh.  
It was clearly intended to mislead the jury. It is true  
as stated by the instruction that a premeditated <sup>plan</sup> is  
not always necessary to constitute murder; and if  
one comes up during a conflict between two and  
takes a part in the affray he may be as guilty as  
the one, who commenced it; but, in order to make  
him so, he must be an aider and abettor. If  
he is acting and doing for himself and not to  
aid the other, and that other killed, he is  
not guilty; and of this fact the jury must  
be the judges. This principle, we hold, is well settled  
by all authorities, and the case of "Campbell vs.  
The People" in 16 Ill. (1 case reported) fully settles it.  
5<sup>th</sup> - The ninth instruction is wrong upon the same ground  
as the seventh and eighth. It prohibits the jury from deciding

was killed, and the circumstance of his friend assaulted and being down when he came along was sufficient to do away with the presumption of malice. Therefore, it being in the heat of passion and no malice under the circumstances mentioned, it could not be law to say it was not murder, and it did bring on the trial the verdict of the jury in the Court below should have been set aside and a new trial granted, which being refused was error, and brings to the attention of the High Court of Appeals.

whether Sept. Scott was aiding Cook or whether he was fighting for some offense of his own. And, in either case it was wrong. If he was an aider and abettor, he was one only from the time that he came up to the spot, and was responsible only for what took place after he was there. If fighting for himself he was responsible only for what he did. And, if there was a reasonable doubt as to whether Cook or Scott struck the blow that caused Dechand's death, unless Scott was aiding and abetting Cook, Sept. Scott should have been not guilty. This instruction decides differently.

6<sup>th</sup>. The Circuit Court erred in refusing to give the instructions marked (C) asked for by defendant.

7<sup>th</sup>. The Circuit Court erred in overruling the motion for arrest of judgment and a new trial, 1<sup>st</sup> because for the reasons stated above, and 2<sup>nd</sup> because the verdict was opposed not only to the law, but also to the evidence in the case. At most it could not have been more than man-slaughter in Sept. Scott. All the testimony in the case, clearly and exclusively shows that what he, Scott, did, he did in the heat and passion of the moment, - nothing being adduced to show malice in any way. His friend, the man, with whom he boarded and the man, who had been his friend and protector was in a conflict with one, superior to him in strength and physical power, - one, who had, some days before sworn to take his life, and coming up and seeing them down, and naturally supposing, at the moment, that the deceased had killed his co-defendant Cook, he rushed to his rescue, and the sad and unfortunate result was the death of the man. It was not murder in Scott, for he

Pleas before the Circuit Court of  
Pulaski County, Illinois.

Be it remembered that heretofore to wit,  
at a Circuit Court begun and held in the  
Court-house at North Calverton on the First  
Monday in the month of September in  
the year of our Lord one thousand eight  
hundred and fifty seven, the Grand jurors  
chosen, selected and sworn in and for the  
County of Pulaski aforesaid, on Thursday  
the fourth day of the term, returned into  
Court the following as a True Bill of  
Indictment.

State of Illinois }  
Pulaski County } Of the September term of  
the Pulaski Circuit Court  
in the year of our Lord one  
thousand eight hundred  
and fifty seven.

The Grand jurors chosen, selected and sworn  
in and for the County of Pulaski in the  
name and by the authority of the People  
of the State of Illinois, upon their oaths  
presented that William Swett and John S.  
Cook, both late of the County aforesaid, not  
having the fear of God before their eyes, but  
being moved and seduced by the instigation of  
the Devil, on the Tenth day of June in the  
year of our Lord one thousand eight hundred  
and fifty seven, with force and arms at the  
County of Pulaski and State of Illinois, in  
and upon one Daniel Harper in the face of

God and the people aforesaid, then and there  
being feloniously, wilfully and of their malice  
aforethought, did make an assault. And  
the said William Scott and John J. Cook,  
with the bundle of a certain Musk saw,  
which they the said William Scott and John  
J. Cook then and there in their right hands  
had and held, the said Daniel Harper in  
and upon the head of him, the said Daniel  
Harper, then and there unlawfully, feloniously,  
wilfully and of their malice aforethought,  
did strike, — giving to the said Daniel Harper  
then and there, with the bundle of the  
Musk saw aforesaid, in and upon the  
head of him the said Daniel Harper, one  
mortal wound of the length of three inches  
and of the depth of one half inch, — of which  
said mortal wound the said Daniel  
Harper, from the said tenth day of  
June in the year aforesaid, until the  
Eleventh day of the same month of  
June in the year aforesaid, at the County  
aforesaid and State aforesaid, did languish  
and languishing did live. On which  
said Eleventh day of June in the year aforesaid,  
the said Daniel Harper, at the  
County aforesaid and State aforesaid,  
of the said mortal wound, died. And  
so the jurors aforesaid, upon their oaths  
aforesaid, do say that the said William  
Scott and John J. Cook, the said Daniel  
Harper, in manner and form aforesaid,  
unlawfully, feloniously, wilfully and of  
their malice aforethought, did Kill and

And afterwards to wit, on Thursday  
of this Term, the following proceedings  
were had and made a matter of  
record viz:—

The People }  
v }  
William Scott }  
John J. Cook }

vs

William Scott being

in custody ordered that the cause  
be continued, and that a capias issue  
as to John J. Cook.



in such case made and provided, and  
against the peace and dignity of the people  
of the State of Illinois.

And the jurors aforesaid, in the name  
and by the authority aforesaid, upon their  
oaths aforesaid, do further present, that  
William Scott and John T. Cook, both late  
of the County aforesaid, not having  
the fear of God before their eyes, but  
being moved and seduced by the instigation  
of the Devil, on the Tenth day of June in  
the year of our Lord One thousand eight  
hundred and fifty seven, with force and arms  
at the County of Peoria and State of  
Illinois, in and upon one Daniel Harper,  
in the peace of the ~~to~~ God and the people  
aforesaid, then and then being unlawfully,  
feloniously, wilfully and of their malice  
aforethought, did make an assault, and  
that the said William Scott and John T.  
Cook, with both their hands, the said Daniel  
Harper, to and against the ground then and  
then unlawfully, feloniously, wilfully and  
of their malice aforethought, did cut and  
throw, and that the said William Scott  
and John T. Cook, with both their hands and  
feet of them the said William Scott and  
John T. Cook, then and there, and whilst the  
said Daniel Harper was so lying upon the  
ground, the said William Scott and John T.  
Cook, in and upon the head, stomach,  
back and sides of him the said Daniel  
Harper, then and then unlawfully,

feloniously, wilfully and of their malice aforethought, did strike, beat and kill, giving to the said Daniel Harper then and there, as well by the cutting and throwing of him, the said Daniel Harper, to the ground, as aforesaid, as also by the striking, beating and kicking the said Daniel Harper, in and upon the head, stomach, back and sides of him the said Daniel Harper, with the hands and feet of them the said William Scott and John J. Cook, in manner aforesaid, several mortal bruises in and upon the head, stomach, back and sides of him the said Daniel Harper - of which said several mortal bruises the said Daniel Harper, from the said tenth day of June in the year aforesaid, until the twentieth day of same month of June in the year aforesaid, at the County and State aforesaid, did languish and languishing did live - on which said Eleventh day of June in the year aforesaid, the said Daniel Harper, at the County and State aforesaid, of the said mortal bruises, died. And so the jurors aforesaid, upon their oaths aforesaid, do say that the said William Scott and John J. Cook, the said Daniel Harper, in manner and form aforesaid, unlawfully, feloniously, wilfully and of their malice aforethought, did kill and murder, contrary to the form of the Statute in such case made and provided, and against the peace and dignity of the people of the State of Illinois.

Thos A Smith  
State Atty

And afterwards to wit. at a Circuit Court  
begun and held at South California in the  
County of Pulaski, State of Illinois, on the 2<sup>d</sup> day  
Monday in April A.D. One thousand eight  
hundred and fifty eight, and on Tuesday,  
the second day of the term, the following  
order and proceedings of said Court were  
had and made a matter of record thereon.

The defendant, John J. Cook, made and  
filed in said Court an Affidavit for continuance  
of which the following is a copy.

State of Illinois } April Term  
Pulaski County } Circuit Court 1858.

The People  
v.  
John J. Cook  
H. A. Scott

Arrest for Murder

On this cause the Deft.  
John J. Cook, for himself, makes oath that  
he is unprepared for trial at the present  
term, & asks for a continuance. Affiant  
shows that he gave a list of the following  
names the Clerk for Subpoenas to issue  
A. A. P. Sanders, Emory Bartis, A. B. Raabers,  
Smit Dinslow & James Paines. Affiant is  
informed that some of them have not been  
served - that Smit Dinslow is now a debt  
bound on the Plaintiff's writ, but makes his  
home in the County of Pulaski - that the  
subpoena has not been served on said

Deal- It further shows a misnomer in the name of said witness- being O'Neal instead of Deal. Affiant shows that he gave the name of Emory Bustin to the Officer to summon- but by some mistake his name does not appear in the subpoena- that Jas. Guerin has not been summoned- that he lives in Cairo Affiant avers that he has used all the usual means within his knowledge to produce said witness at the present term, and that they are not, and affiant is informed, will not be in attendance. Affiant avers that he expects to prove by all those of said witnesses, that a short time before the killing took place, deceased threatened and sworn that he would kill affiant, and that one of them, James Paviour pers-  
"suaded & used ~~various~~ various means to-  
persuade the de<sup>d</sup> not to attack affiant, but that he left the boat and went directly to affiant's boat at the time he was threatening affiant's life, & that then the difficulty began, which resulted in the death of Deal.

Affiant cannot prove these facts by any other witness- that they are not absent by his consent or procurement- that there are other material witnesses absent.

Affiant asks for a continuance not for delay, but that justice may be done affiant  
Subscribed & sworn to in Open Court.

April 13th 1858.

J. J. Condit

Chas. M. Duvivier Clerk

The People }  
1 }  
William Scott }  
John J. Cook } An motion of  
Proct Attorney for  
John J. Cook, and on affidavit of the  
defendant, this cause as to said defen-  
dant Cook, is continued until next  
term of this Court.

And at another day  
to wit. on Thursday, the fourth day  
of the term, the following order of  
conviction was entered, and made a  
matter of record in said Court

The People }  
10 }  
William Scott, indicted }  
with John J. Cook } On this day came  
Hile Eeg and moved counsel for the prisoner,  
and moved the Court to quash the indictment  
in this cause - which said motion was by  
the Court overruled. And thereupon came the  
People by their State's Attorney, and the said  
defendant, William Scott, who stands indicted  
of murder, was led to bar in custody of the  
Sheriff & quiler of the Court thereof arraigned  
and pleaded "not guilty" to the indictment,  
and for his trial put himself upon God  
and the Country. And the said prison-  
er was then furnished with a copy of the  
indictment enclosed with list of witnesses  
against him, and a copy of the Journal

of the Thruway press duly impounded  
for the term. Thereupon came a jury  
to wit - William Field, Andrew Brown  
William Thompson, Charles Collins, Henry  
Mangold, William Stess, John J. Chamberlain,  
John Owens, Solomon Barnhart, G. E. Lyffe  
John Abbot and John Clin, who being  
sworn, tried and sworn, the truth of and  
upon the premises to speak - and having  
heard the evidence, upon their Oaths do  
say "That the said William Deutt is  
guilty of murder". Whereupon the  
Defendant, by his counsel, moved for a  
new trial and in arrest of judgment,  
And thereupon the said William Deutt  
is arraigned to jail

(A) The People }  
vs } Murder  
Thomas Scott }

The Court instructs you that Murder is the unlawful killing of a human being in the peace of the People with malice aforethought expressed or implied. Given

A) 2. Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof. Given.

3. Malice is implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart. Given.

A) 4. If you believe from the evidence that the defendant deliberately struck the deceased on the head with the handle of a buck-saw, in manner and form as charged in the indictment, and thereby inflicted upon the head of said deceased a mortal wound of which deceased died, and that the said handle of a buck-saw was a weapon of such size and kept as in the hands of the defendant striking such a blow as defendant did strike, deceased would inflict a mortal wound, you should find the defendant guilty. Given

A) 5. — If you believe from the evidence that the defendant struck the deceased with the said handle of a buck saw, without any considerable provocation, and thereby inflicted upon deceased a wound of which he died, you should find the defendant guilty. Given

A) 6. And such is the law, when all of the circumstances connected with the said striking of deceased by defendant, shows an abandoned and malicious heart. Given

A) 7. If you believe from the evidence that John J. Coak and deceased were engaged in a personal conflict, and while thus engaged the defendant interfered and deliberately struck the said deceased with the said handle of a buck saw, in manner and form as charged in the indictment, and thereby inflicted a mortal wound upon said deceased, you should find the defendant guilty, even though the deceased may have been previously struck, in the said conflict, another mortal wound by the said John J. Coak. Provided you believe from the evidence, beyond a reasonable doubt that the death of deceased was the result of these wounds.

Given.



A) 8. It is not necessary in all cases that there should be a preconcerted plan between two persons, to make them both guilty, — whenever a murder is committed by one person, and during the conflict another comes up and aids, abets or assists in the killing without any considerable provocation, the latter is alike guilty of the murder.  
Given.

A) 9. And if you believe from the evidence that the mortal blow in the case was struck by John J. Cook, and that afterwards defendant came up and participated in the conflict, and, without any considerable provocation, with the said handle of a buck-saw, deliberately inflicted upon the head of deceased a wound, which wound hastened or accelerated the death of deceased, you should find the defendant guilty.  
Given.

Instructions for Defendant Given  
by the Court.

B) 1st. The jury are instructed that if there be a reasonable doubt as to the guilt of the defendant Scott, ~~that~~ they will find him not Guilty: a reasonable doubt is such a doubt as will make a man of ordinary caution and reflection, hesitate and doubt.  
Given.



Remininders of instructions for  
defendant. Given by the Court.

B) 1. The Court instructs the jury, that unless all the material allegations in the indictment have been proven beyond a reasonable doubt, the verdict should be not guilty.  
Given

B) 2. That inasmuch as the indictment charges that William Scott, the defendant on trial, killed Daniel Harper - if it is not proven that he did so in manner and form as charged in the indictment, the verdict should be not guilty.  
Given

B) 3. That when the allegation in the indictment charges the defendant with killing Daniel Harper, that allegation is not sustained by proof, that defendant killed Harper.  
Given

B) 4. In criminal cases, the jury cannot weigh the evidence, - and if there is a conflict in the evidence with reference to a material allegation in the indictment, the verdict should be not guilty.  
Given

B) 5. The allegation in the indictment <sup>in this case</sup> that the defendant killed Daniel Harper, is a material allegation.  
Given

(c) Instructions for defendant, refused  
by the Court.

The Court instructs the jury, that if they believe from the evidence, beyond a reasonable doubt, that def<sup>t</sup>. Scott was present during a portion of the difficulty and affray between Coak & Harper - still they must further believe, beyond a reasonable doubt, from the evidence that Scott was there for the purpose of aiding and assisting Coak, and that he, Scott, had formed that purpose or intent before Coak struck the blow. Provided they believe that the blow struck by Coak probably caused his (Harper's) death, or ~~that~~ they must find defendant not guilty.

Refused

(Excepted to by defendant)

(c) The Court instructs the jury, that if they believe from the evidence that Coak struck the first blow upon Harper, and that said blow was sufficient to cause the death of Harper, they will find def<sup>t</sup>. Scott not guilty - unless they further believe from the evidence that there was a concert of action between the defendants, Coak & Scott, - and to constitute a concert of action the jury must believe, from the evidence, that there was a common cause of quarrel between Coak & Scott upon the one side and

Harpur upon the other — and that Capt. Scott  
was present at the difficulty between Cook  
& Scott before Harpur was struck by  
Cook, for the purpose of aiding and assisting  
Cook.

(Excepted to by Defendant)

(C)

The jury are instructed that the People  
must prove all the material allegations  
in the indictment beyond a reasonable  
doubt, and the names of the deceased  
and the defendant are material  
allegations — and unless the People  
have shown, by the evidence, beyond a  
reasonable doubt, that the deceased  
was named Daniel Harpur, and the  
defendant was named William Scott,  
they will find defendant not guilty.

(Excepted to by def.)

(C)

The jury are instructed that the People  
must show, by evidence, beyond a reason-  
able doubt, that no other person  
than defendant Scott could have  
killed the deceased.

(Excepted to by def.)

And afterwards, to wit. at said Circuit Court held at North Caledonia in the County of Pulaski and State of Illinois commencing on the second Monday in the month of April in the year of our Lord one thousand eight hundred and fifty eight - and on Saturday the sixth day of said term, the following order and proceedings of said Court were had and made a matter of record therein.

The People

Murder

William Deutt indicted  
with John J. Cook

On this day came the State Attorney and the Defendants counsel being then present, the Court orders that the motion entered in this cause on Thursday for new trial and in arrest of judgment, be overruled. And thereupon the said William Deutt, who stands convicted of murder, was again led to the bar in custody of the Sheriff and jailer of this Court - and thereupon it being demanded of him if ~~he~~ anything for himself he had or knew to say why the Court should judge and execution against him of and upon the premises should not proceed - He said he had nothing but what he had before said. Thereupon it ~~is~~ considered by the Court that he be hanged by the neck until he be dead, and that execution of this judgment

be made and done upon him, the said  
William Scott, by the Sheriff of Pulaski  
County Illinois, on the Eleventh day  
of May next, between the hours of Eleven  
O'Clock A.M. and One O'Clock P.M. of  
the same day, at the usual place of  
execution. And therefore the said  
William Scott is committed to jail,

And at another day to wit: on Monday  
the ninth day of May A.D. 1838, came  
S. Watson Webb, who was the acting  
State Attorney protem in the trial of  
the foregoing case, and produced to  
the Clerk of this Court a written statement  
of the testimony introduced on the  
trial of said case, of which the  
following is a true copy

The People

v

Indicted for Murder.

William Scott

} Pulaski County Circuit Court

April Term A.D. 1838. Indicted jointly with  
one John J. Cook. Cook continued his trial,  
Scott pleads "Not guilty," and was tried  
and convicted, Motion in arrest of judgement  
and for a new trial - Motion overruled and  
Scott sentenced. J. J. Scott excepted.

### The People's Testimony

John F. Brown sworn. I was walking  
up the river bank the evening that the difficulty  
occurred. It was after supper about seven  
o'clock. I saw two men, whom I afterwards  
learned were Cook and Harper quarrelling;  
Cook struck Harper with a buck saw -  
which he (Cook) held in his hands. He held  
the saw in both hands, and drew it over  
his left shoulder and struck Harper on the  
right side of the head or face. The saw was  
broken as well as the frame by the blow. Cook  
and Harper then clinched and fell to the ground,  
and rolled down the bank. Harper did not  
seem to be much stunned by the blow. Whilst  
Cook and Harper lay upon the ground, side by  
side, defendant Scott came up from some  
distance and exclaimed "Kill the damned  
Irishman, or if you don't I will" and  
picked up the handle of the same buck saw  
(it was the longest piece of wood in the frame  
of the buck saw), and struck Harper a blow  
upon the head. I was about thirty feet off  
and heard the sound. Harper's head was half



buried in the sand. Scott did not strike Harper  
but once. I think a person could strike a harder  
blow with the handle as used by Scott than with  
the whole together, as used by Cook. Harper  
had to be helped up, and was supported off by  
two men. There was a brick yard on the bank  
shown where the difficulty took place. I heard  
that Scott worked there. There was a boat when  
they kept boarders just opposite, or nearly so, in  
the Ohio river, the going from the brick yard to  
the boat, you would have to pass near where  
the difficulty took place. There were several  
persons about at the time. Scott seemed considera-  
bly excited. I learned that Harper died the  
next morning about 9 o'clock. — Was not  
acquainted with either Harper, Cook or Scott.  
— The prisoner here is the one who struck  
Harper with the handle of buck saw. It was  
in Laurel City, Pulaski County, Illinois, sometime  
near last summer, I think in September.

Joseph Hutchinson sworn. — I was  
sworn in to act upon the coroner's jury  
the day after the difficulty; but I got there  
too late. The inquest was going on. It was  
the inquest over Harper. I saw Harper's body  
~~and~~ <sup>and</sup> saw but one wound — I did not examine  
closely, as mortification had commenced, and  
the smell was bad. It was on the right  
side of the face, and looked as though it had  
been inflicted with a dull or blunt instrument.  
Barn had a good deal of trading and dealing  
with Harper. I always thought him to be an

Christman, I don't know for certain that he was an Christman - but I know it as certain as I know any other man is. - Don't know that he ever told me he was or not."

Charles M. Farrell sworn. - "I was one of the coroner's jury to sit on the case, but arrived too late. I know nothing about the affair at all."

Richard H. Warner sworn. - "I was one of the jury at the coroner's inquest. The deceased had some three or four marks or severe wounds upon his head. The wound on the right side was the largest, and looked as though it was done with a saw, as I could see the prints, some thing like saw teeth, in the wound. The others were dangerous wounds, but it was our opinion that wound was the result of any of them." Then the People retires their case, and the Defendants then called and had

Mrs. Harper sworn. - "I was the wife of Daniel Harper - on the evening of the murder I ran out and saw two men bringing him home. I asked him what was the matter - He said he was killed. I told him not to tell me that. He said he was. I sent for Dr. Stupp. He came down and examined the wounds, and told him that he must die."

(The Defendants counsel then desired to introduce the dying declaration of Harper. The Court permitted them to do so, and Mrs. Harper continued.)

"I asked him who killed him, - and he said 'E. M. killed me and I want you to be avenged.'"

of course I believed him, — how could I doubt his dying words? I have frequently enough to want to see the man who killed my husband to have justice done him. Harper told me at the bridge, before Dr. Stapp was sent for, that he was dying and Cook killed him — and he told me the same thing at the house after Dr. Stapp told him (Harper) that he (Harper) could not live, Harper told me that Cook killed him with a saw, and that the others jumped on him. Harper did not mention Scott's name."

For the Sept. retul his case. — The Instructions marked (A) were asked for by the People's Attorney, and given — to which Defendant excepted. Those marked (B) were asked by Sept's Attorney and given by the Court to jury. Those marked (C) were asked by Sept's Attorney, but refused by the Court, to which Sept excepted.

A. H. Watson Webb, do hereby certify that the above and foregoing is a true and correct copy of all the testimony introduced on both sides in the case of the People vs William Scott on a trial for Murder, in the Pulaski County Circuit Court, at the April Term of said Court, A. D. 1838.

Cairo Ill. May 6th, 1838.

A. H. Watson Webb  
State Attorney  
Proctor

State of Illinois  
Pulaski County J. H. Churchill, Clerk  
Clerk of the Circuit Court in and for  
the County aforesaid, do hereby  
certify that the foregoing papers contain  
a true copy from the records and files  
in my Office of the indictment & proceedings,  
including Instructions of the Court for  
the People and for the Defendant Scott,  
together with the order of trial and  
conviction and the sentence of said  
defendant Scott. Also copy of affidavit  
of Court for continuance, and the  
verdict given on the trial of said  
cause, filed by H. Watson Webb, State's  
Attorney General - filed on the day  
and in the year mentioned in the  
foregoing copy of the record.



The testimony whereof I  
hereunto subscribe my  
name and affix the  
seal of the Circuit Court  
of the County aforesaid,  
at office in So. California  
on this 10th day of May  
A.D. 1858

Churchill Clerk  
per C. W. McMillan Deputy

I H Watson Webb do hereby certify that the above  
and foregoing is a true and correct Record of the  
proceedings in the case of The People vs William  
Scott Indicted for Murder, and that in the absence  
of Thomas H. Smith States Attorney for the District  
I had been appointed States Attorney pro tem  
and prosecuted for the people in the above men-  
tioned case. Cairo Illinois May 1<sup>st</sup> A.D. 1838

H Watson Webb  
States Attorney  
pro tem

I have in review the foregoing Trans-  
cript and examined the original  
of error and am of opinion there  
is reasonable Cause for allow-  
ing a writ of error and I do judge  
the same and the Clk. of the Supreme  
Court of the first Grand Division will  
make the same a Record as acc-  
ordingly. Given under my hand  
as one of the Justices of the Supreme Court at  
Cairo Illinois, this 10<sup>th</sup> May 1838.

Stanley Moore

No 20

William Scott

vs

The People

William Scott  
vs  
The People

Filed 24<sup>th</sup> May 1858

N. Johnston Clerk

2226  
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1858  
1858

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William Scott; Indictment for  
vs. } Murder  
People. } So. Pulaski  
Circuit Court -  
April Term 1888

Clerk of Supreme Court of  
the 1st grand Division New  
York superseded in above  
entitled cause, to Clerk &  
Shiriff &c -

Samth Highland Park

No 20

William Scott

by { Preyer

The People

Filed 24. May 1858.

N. Johnson Clerk



STATE OF ILLINOIS  
SUPREME COURT,

} SS.

THE PEOPLE OF THE STATE OF ILLINOIS;

WRIT OF ERROR.

To the Clerk of the Circuit Court for the county of *Pulaski*

GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Pulaski* county, before the Judge thereof, between

*The People of the State of Illinois*  
plaintiff, and *William Scott*

defendant it is said manifest error hath intervened, to the injury of the aforesaid *William*

*Scott* as we are informed by *his*

complaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court, the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at

Mount Vernon, in the county of jefferson, on the *10<sup>th</sup> Tuesday after the 2<sup>d</sup> Monday of*  
*November* next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law:

*John D. Catron*  
Witness, the Hon. ~~WALTER H. STATES~~ Chief Justice  
of our said court, and the seal thereof, at Mount Vernon this

*24<sup>th</sup>* day of *May*  
in the year of Our Lord One Thousand Eight Hundred  
and Fifty-*Eight*.

*Wm. Johnston*  
Clerk Supreme Court.

"This Mistake of Error is made a Suppression, and  
is to be Obliterated accordingly."

North Johnston Cliff

No 20

William Scott  
as { Mistake of Error - Made  
    } a Suppression

The People

Issued - Made a Suppression

Dear John - 24th May 1858

North Johnston Cliff

20

William Scott

1858

m

The People

Sept. 1858

From the Palaski

8630

Dismissed Nov. 1858 -  
for want of abstracts.