

8426

No. _____

Supreme Court of Illinois

People

vs.

Lewis Morrell

71641  7

25-11

Morrell
vs
People

8426

State of Illinois
Marion County *ss* Pleas^{ed} proceedings had in
The Marion Circuit Court before
The Hon Silas L. Bryan Judge of
The 2^d Judicial Circuit of the State
of Illinois in a cause heretofore pen-
ding in said Court wherein The
People &c are Plaintiffs and
Lewis Morrill Defendant.

It is Remembered that on the 20th day of
March A.D. 1863, the Grand Jurors chosen selected
and sworn in and for the County of Marion and State
of Illinois, brought into and presented in open Court
an Indictment against the above named Defendant
which is in words and figures following To-wit

State of Illinois
Marion County *ss* Of the March Term of the Marion Cir-
cuit Court, in the year of our Lord
1863.

The Grand Jurors, chosen
selected and sworn in and for the County of Marion,
in the name and by the authority of the People of the
State of Illinois upon their oaths present that
Lewis Morrill on the nineteenth day of March
in the year of our Lord One thousand Eight
hundred and sixty three, at and in the County of
Marion aforesaid, before Jacob O. Chance clerk of
the Marion Circuit Court, did then and there subscribe

his said Lewis Morrells name to and then and there
upon oath depose and say that the statements contained
in the affidavits to which he so then and there subscribed
his name were then and there true, said affidavits
then and there being a matter whereby Law an oath or
affirmation is required, Dourt an application for contin-
uance of a cause then pending before said Court
wherein the People were Plaintiff and the said Lewis
Morrell was Defendant, Indictment for obtaining United
States Treasury notes under false pretences - said
Jacob O. Chance as clerk aforesaid, then and there having
competent and full authority by Law to administer
the oath to the said Lewis Morrell - all the matters
hereinafter charged to be false in said affidavits being
then and there material to the points in question in said
application for continuance of said cause and being
then and there material to the points in question in
said affidavits - That among other things in said affi-
davits, the said Lewis Morrell, did then and there
unlawfully, willfully, corruptly, false and feloniously
depose and swear, that he expected to be able to prove
by one James Coffe an absent witness, that he stoped
at Centralia and had been there two or three days pre-
vious to his taking the cars for Indianapolis Ia., and
that he had several one hundred dollar bills, and
did desire to get a one hundred dollar bill changed
to pay him the said Coffe some money, and that he
had not small bills or small money enough to pay to said

Coffe the amount that said Morrell was owing him -
Whereas in truth and in fact the said Lewis Morrell
then and there well knew that he did not expect to and
could not prove by said Coffe, that he had stoped
in Centralia two or three days as in said affidavit
stated, but at the time referred to in said affidavit
came from some point South of Centralia and between
that place and the Ohio River, and further he said
Lewis Morrell then and there well knew that he did not
expect, and could not prove by said Coffe, that at the
time and place referred to in said affidavit, he desired
to get a one hundred dollar bill changed to pay him
said Coffe some money - that he said Lewis Morrell
then and there did not expect and well knew that he
could not prove by said Coffe that at the time and
place referred to in said affidavit, he said Morrell
had not small bills, or small money enough to pay to said
Coffe the amount that said Morrell was owing him, on
the contrary he said Morrell at the time of signing and
swearing to the said affidavit as hereinabove mentioned,
then and there well knew, that at the time and place mention-
ed in said affidavit, he said Lewis Morrell had on
him and in his possession a large amount of small bills
or small money, amounting to the sum of one hundred
and fifty Dollars in United States Treasury Notes and
Bank Bills of denominations of from one to ten dollars.

And among other things the said Lewis Morrell
in the said affidavit, unlawfully, willfully, corruptly, falsely

and feloniously did then and there swear, depose and say
that by one William Grant another absent witness, he expect-
ed to prove, that affiant (said Morrell) had not small
money enough to pay both without getting one hundred Doll-
ar Bill changed whereas in truth and in fact he said
Lewis Morrell well knew that that he did not expect
and could not prove by said William Grant or anyone
else, that he had not small money enough at the time
and place referred to in said affidavit to pay both bills,
but on the contrary knew that he had small money enough
to pay one hundred or any sum not over one hundred dol-
lars - That at the time and place referred to in said
affidavit and that part last above mentioned he said
Lewis Morrell well knew he had in his possession and
upon his person small bills and United States Treasury
notes of denominations from one to ten dollars, none
exceeding twenties amounting to one hundred and fifty
dollars all of which was to the said Lewis Morrell
well known, at the time he signed and was sworn to said
affidavit to wit on the day and year first aforesaid at
Marion County aforesaid. And so the Grand Jurors afo-
said, upon their oaths aforesaid in the name and by the
authority aforesaid do present, that the said Lewis Morrell,
on the day and year aforesaid at the County aforesaid, in manner
and form aforesaid unlawfully willfully, knowingly, corruptly,
falsely and feloniously did commit willful and corrupt perjury
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 Amos Watts State Attorney."

Which Indictment is enclosed on the back as follows
To-wit

"
The People

vs

Lewis Morrell

Indictment for perjury

A True Bill

James D Gray Foreman

Witnesses J. O. Chance

W. W. Willard

S. Storey

N W Cole

A Stevens

O. E. Willis

E. S. Condit

W D Adams

Filed March 20th 1863

J. O. Chance Clerk

Capias & Bail ordered \$500

Afterwards on the 23^d day of March AD 1863
the following order was by the Court in said cause
made To-wit

"
The People vs

vs

Lewis Morrell



Indictment for perjury

And now at this day To-wit

Monday March 2nd 1864 This cause is called for trial
came the People by Wills states attorney, and the defendant
being in custody came and by his attorneys Messrs Willard
and Goodnow and the defendant by his attorneys moves
the Court to quash the Indictment herein and the Court
having heard Counsel thereon doth refuse said motion,
and the said defendant by his said attorneys moves the
Court for an attachment against William Corbit a
witness, which motion the Court allows and ordered
that attachment issue, and the defendant by his
attorneys waives copy of the Indictment and list of jurors.
And defendant being put on his trial waived arraign-
ment and for plea says that he is not guilty as in the
Indictment he is charged and of this he puts himself
upon the Country &c and the People do the like and
issue being joined Let a jury come, and thereupon came
the following jury Court. John Arrowsmith, Emanuel Hawk-
land, John Davis Richard Evans, Eli Boring, David
Wilson, W L Stonecipher, Charles Souger, John Green
Robert Craig, James Perryman and William Pagan, twelve
good and lawful men who being tried, elected and sworn
well and truly to try the issues joined herein who having
heard the evidence, arguments of Counsel and Instructions
of the Court retired to consider of their verdict and afterwards
brought into Court the following Verdict "We the jury find
the defendant guilty in manner and form as charged and
fix the term of his confinement in the Penitentiary at eighteen
months - which verdict the Court records and thereupon

The Defendant by his said attorneys moves the Court for a new trial, which motion the Court overruled and enters judgment on the verdict. It is therefore ordered and adjudged by the Court that the Defendant Lewis Morrell stand convicted of perjury as in the Indictment charged and that said Defendant Lewis Morrell be confined in the State penitentiary for the term of one year and six months one day of said term to solitary confinement and the residue of said term to hard labor. And the Court doth further order that the Sheriff of Marion County execute the judgment of this Court and that he remove the Defendant Lewis Morrell from the jail of Marion County after the expiration of two days, the said Defendant having been sentenced to two days imprisonment in said jail under another conviction and judgment at this present term of this Court, and that said Sheriff deliver the body of said Lewis Morrell to the authorities of the State penitentiary at Joliet in the State of Illinois"

. Afterwards Court on the 3^d day of April AD 1863 said Defendant by his Counsel files his Bill of Exceptions in words and figures following Court

State of Illinois
Marion County

The People

vs

Lewis Merrill

Indictment for Perjury

Be it remembered that on
the twenty third day of March A.D. 1863 at
the March Term of the Marion Circuit Court
the above entitled cause came on to be
heard when the deft by his counsel moved
the court to quash the Indictment which
motion was overruled by the court, and
a jury called by the court to try said
cause: That the following witnesses were
sworn and testified on behalf of the Peo-
ple, to wit W.W. Willard, Jacob O. Chance
Samuel Stever and C. E. Willis: That W.W.
Willard being first brought under stand
testified as follows, to wit, I saw the de-
pendant sign his name to the affidavit
It was signed the day it was dated the 19th
day of March A.D. 1863 in Marion County
State of Illinois, Jacob O. Chance then be-
ing introduced testified as follows
I saw the dependant sign his name
to the affidavit and he swore to the same
before me on the 19th day of March 1863
at the time of signing the same this
was in Marion County State of Illi

mois: Here the People by the States Attorn-
ey offered in evidence the following af-
fideavit to which the deft by his Counsel
objected, and the objections was over-
ruled by the Court and the affideavit
was read to the jury to wit:

State of Illinois }
Marion County } People vs Lewis Merrill

Lewis Merrill defendant herein
being first duly sworn deposes and says
that he was indicted at the present Term
of this Court for obtaining Treasury notes
under fals pretense, and that he can not
safely proceed to the trial of this case and
make a full and fair defence an accou-
nt of the absence of James Coffee who re-
sides in Illinois Town and State of Illi-
nois, and that he expects to prove by some
witness that he was present at Oelias in
Marion County Illinois at the time
of the alleged offence charged in the said
Indictment that he has known Lewis
Merrill for over nine years, and that he
has always sustained a good moral
character and he has been engaged
in honorable business during that
time that he has lately been engaged
in grocery business in the city of

Memphis Tennessee, and was on his way to Indianapolis Indiana, and that he had stopped at Centuria and been there two or three days previous to his taking the cars for Indianapolis Ind and that he had several one hundred dollar bills, and did desire to get a one hundred dollar bill changed to pay him the said coffee some money and that he had not small bills or small money enough to pay to said coffee the amount that said Merrill was owing him and he expects to prove by one William Grant that he was with said Merrill at the time of the alleged offence at Oelins Illinois who was in company with affiant from the City of Memphis and knows that affiant had goods in his charge upon which there was to be paid charges to the said Grant and that affiant had not small money enough to pay both without getting one hundred dollar bill changed that affiant was going to proceed up the Chicago Branch R.R., and Grant was going East from Oelins and affiant was desirous of paying him his money and that said Grant resides in the City of Louisville in the State of Kentucky and that

affiant expects to prove that by Edward S Taylor who resides in City of Springfield Illinois that he was sitting in the R R bar in the seat behind affiant at the time of the alleged offense charged in the said indictment and paid attention to what was said and the subject of gold was not mentioned in the said conversation, and that affiant did not remove from his seat before he returned to Stevens his money and that he expects to have the testimony of the aforesaid witnesses at the next term of this Court, and that he knows of no other witness by whom he can prove the same facts, and that this affidavit is not made for delay but that justice may be done

Subscribed and sworn Lewis Merrill
to before me this 19th day
of March 1863

J O Chance Clerk

On the back
of Affidavit is

Filed March 19 1863 J O Chance Clerk
O E Willis next being introduced testified as follows I assisted in searching the defendant after his arrest at the Station House in Centerville we found in his vest pocket a ten dollars

bill and an one dollar bill. I asked deft if that was all he had he replied that it was, I told him it was a small amount of money to go as long a journey as he was going, I told him people sometimes carried money in their boots he said he carried his there we then pulled off his boots and found in one of them One hundred thirty nine dollars in small bills none larger than ten dollars or smaller than one dollar, Mr Stoner assisted in the search, I found no pocket book on him we did not examine his Undershirt there might have been other money on him we searched all his pockets pulled off his pants every thing but his Undershirt and Drawers there might have been two one hundred dollar bills in the seams of his Undershirt and we not known it deft was locked in its a room in the Station house all night this was on the 15th Jerry 1863

Samuel Stoner then being introduced testified as follows the defendant was delivered to me about 8 o'clock on the evening of the 15th Jerry 1863 we took him into a room in the Station house in Centralia, and searched him Mr Willis assisted we found a ten dollar

bill and a one dollar bill in his vest pocket, and one hundred thirty nine dollars in one of his boots this was all the money we found on him we searched all his pockets pulled off all his clothes except his Undershirt and drawers he was locked up in a room in the Stearns house all night he might have had other money on him, and we not found it did not examine the seams of his Undershirt.

Here the People by the States attorney introduced the minutes of the court in the case of the People vs Lewis Morrall and a person whose name to the Grand jury is unknown indictment for obtaining treasury notes under false pretenses to which deft by his counsel object and the objection was overruled, and the minutes of the court in said cause read to the jury as follows to wit March 19 motion to continue after indictment found on the affidavit of the defendant Morrall, Application withdrawn continuance withdrawn, cause set for Monday 2 weeks The prosecution then recalled W W Willard by

whom and Jacob O Chance, they proposed and offered to prove the materiality of such parts of the affidavit as are contradicted in the Indictment to which defendant by his counsel objected, on the ground that the jury in this case are to judge of that fact from the evidence objection sustained, and evidence ruled out. Here the People closed their case.

The defendant then introduced Samuel N. Curragie Sheriff of Marion County who was duly sworn and testified as follows the defendant was delivered to me on the evening of the 16 January 1868 by the constable we all three deft constable and myself slept together in the same bed in the debtors room in the jail deft had no opportunity to communicate with any one of us he was delivered to me except the constable and the prisoners in jail.

W. W. Willard who was sworn for the prosecution was then called for the defense and testified as followed I was present on the 17 January in the debtors room in the jail with the deft and saw him take from the hem of his Under shirt two one hundred dollar Treasury notes for the purpose of securing

bail, debt deposited the two one hundred dollar Treasury notes with another hundred dollars received from the Sheriff with a man to go his security. It was admitted by the States attorney for the People that one James Cooper an absent witness would testify that he witness was at Odins on the 15 January 1853 when defendant was arrested for obtaining money under false pretences, but was not present at said arrest, and that defendant owed him one hundred and Eighty seven dollars, and that debt was going to pay him said money that he witness went to Odin to get the money from debt that the money debt borrowed from witness at Indianapolis last fall.

Here defendant closed his case and this was all the testimony in the case.

Upon which the court gave the following instructions hereto appended to which defendant objected.

Signed and sealed this twenty seventh day of March A.D. 1853

Amos Watts States attorney

Lewis Nemell

of Wellers Goodrich
his attys

People
vs
Lewis Merrill

If you believe from the evidence that defendant is not guilty the form of your verdict will be we the jury find the defendant not guilty. Given

If you find defendant guilty the form of your verdict will be we the jury find the defendant guilty in manner and form as charged in the indictment, and fix the term of his confinement in the Penitentiary at - years (not less than one nor more than ten years). Given

If you believe from the evidence that defendant in his affidavit swears to in the indictment in that case sworn that he expected to prove by Wolfe or Grant any fact mentioned in the affidavit as charged in the indictment that defendant knew at the time he swore to said affidavit that the fact or facts he swears he expects to prove did not exist that such pretended fact if proved by any witness would have been false that such matter was material to the point in question upon the application for a continuance that defendant knowingly falsely, willfully

corruptly and feloniously swore to the affidavit mentioned in the indictment you should find defendant guilty if all other material allegations have been proved as charged in the indictment

Given

The Law presumes that no man will commit the crime of perjury and if you believe from the evidence that defendant in his affidavit stated any fact or facts as charged in the indictment in this cause that such stated matter in said affidavit was material to the point in question on the application for continuance as charged in the indictment that defendant knew he was swearing falsely at the time he signed & swore to said affidavit that he knew that the ^{fact} attempted to be shown in said affidavit was false and did not exist all other material allegations being proved to your satisfaction you should find defendant guilty Given

I hereby certify that the foregoing record contains a full and true history of the proceedings on said trial: Witness my hand and seal this third day of April 1863

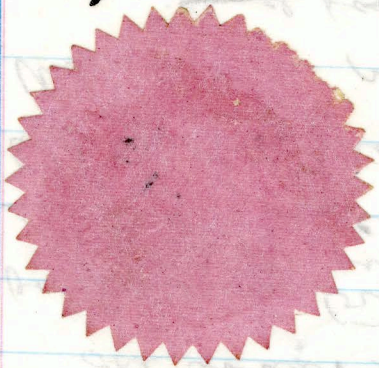
Silas S. Bryan
Judge 2^d Dist. Ct. Ills

State of Illinois
Marion County

ss

J. O. Chance Clerk of the

Circuit Court of said County do
hereby certify the foregoing to be a true and complete
Record of the proceedings had in our said Court
in the above entitled cause as the same remain on file
and of Record in my office.



Given under my hand and
official seal at Salem this 3^d day
of April A.D. 1863

J. O. Chance Clerk

Errors Assigned

And now comes said defendant by Willard
Goodnow his Attorney, and sets down and as-
signs the following causes of error

- Cause 1 The Court erred in refusing to quash the In-
dictment For that the Indictment does not
show the facts sworn to in the affidavit were
material to the issue
- 2 The Indictment does not show that the
case in which the affidavit was filed
for a continuance had been tried and
defendant found guilty
- 3 The Indictment does not show the Circuit
Court of Marion County was in session at
the time the affidavit was made and filed
- 4 Does not show that a continuance was
granted upon said affidavit in the case of the

State of Missouri:

Having inspected this record and
the errors assigned thereon, I am of opinion
that there is reasonable cause for allowing
a writ of Error and the same is hereby allowed
from under my hand this 13th day of April
1863

Edw. Moore
Judge Sup. Court.

Errors Assigned

And now comes said defendant by William Woodson his attorney
and sets down and assigns the following causes of error

- 1 The Court erred in refusing to quash the Indictment: For that
the Indictment does not show the facts sworn to in the ^{affidavit} ~~Indictment~~
were material to the issue.
- 2 The Indictment does not show that the case in which the affidavit
was filed for a continuance had been tried, and defendant
found guilty.
- 3 The Indictment does not show the Circuit Court of Marion
County was in session at time the affidavit was made
out and filed.
- 4 Does not show that a continuance was granted upon said
affidavit in the case of the People vs Lewis Merrill for obtain-
ing Treasury notes under false pretences, nor if he joined in the ^{cause} ~~case~~.
- 5 Does not show the affidavit was sufficient to grant a con-
tinuance of said cause.
- 6 The Court erred in overruling defendant's motions for a new
trial. The verdict was contrary to law and evidence.

- 7 The Court erred in admitting the affidavit in evidence without first proving J O Chenu was the clerk of the Circuit Court of Marion County
 - 8 The Court erred in admitting the minutes of the Court in a case of the People vs Lewis Morrell, and a man whose name to the Grand jury was unknown
 - 9 The Court erred in refusing the motions for a new trial, because, the evidence shows the affidavit and continuance was withdrawn before the Indictment in this case was found
 - 10 The Court erred in admitting the third and fourth instructions to go to the jury
 - 11 And for these and other manifest errors this cause ought to be reversed
- Willard Goodnow attys for
 Louisa in Error Pky in Error
 S. Heavy State Ct, 12th Cir Dist

25
 Lewis Morrell

vs
 the People

Forgery

Filed Nov. 9 - 1863.

Washington City

Paid \$11. by Goodnow

W C Goodnow
 atty for Pky

Prose } Brief of Defendant in Error
15 } Perjury
The People }

It is not necessary to prove
all the assignments of Perjury -

Wharton Crim Law 761 -

To 2nd assignment of Error -

Perjury may be committed when
the ~~assignment~~ indictment is defective

2 Russ on Crimes, 602

To 4th error assigned

It is not necessary that the
false oath should obtain credit

2nd Chitty Crim Law 306

2 Russ on Crime 603

To 9th error assigned

The crime is complete when the
affidavit is sworn to

2nd Russ 666

Thomas J. Casey
State's Atty

Lewis Mowse

25

The People's

Book of ~~the~~

an even

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25 — — //

Mossell

vs

People

Emile Mason

Reverend &
Remembrance

Reported

32 222

1853

State of Illinois }
Marion County } ss

Lewis Merrill

vs
The People

Error to Marion

Mr Clerk please

execute the above en-
titled cause

paid of 11.



W C Goodnow

Atty for P. H. G.

Merrell
my
People.

Prince

Filed Nov. 9 - 1863.
N. Johnston. *cl*

Lewis Morrell }
The People }
as

ABSTRACT.

In Supreme Court---1st Grand Division, in the State of Illinois.

THE PEOPLE, }
vs. } INDICTMENT FOR PERJURY.
LEWIS MORRELL, }

- 1 Shows caption by the Clerk of the proceeding had in this cause. That on the 20th day of March, 1863, the Grand Jurors brought into and presented in open Court an Indictment against Lewis Morrell. Caption of Indictment: "State of Illinois, Marion county, ss. Of the March term of the Marion Circuit Court, in the year of our Lord, 1863. The Grand Jurors &c., present that Lewis Morrell, on the 19th of March, 1863, in the County of Marion before Jacob O. Chance,
- 2 Clerk of the Marion Circuit Court, did then and there subscribe his name, and upon oath depose and say the statements contained in the affidavit, he so then and there subscribed his name were true, said affidavit being a matter whereby law and oath is required, to-wit: an application for continuance of a cause then pending before said Court, wherein, the People were plaintiffs and said Lewis Morrell, defendant. Indictment for obtaining United States Treasury Notes under false pretences. Jacob O. Chance, as Clerk aforesaid having competent and full authority by law to administer the oath to said Lewis Morrell, all the matters charge as false in said affidavit being material in the application for continuance of said cause, and material to the point in question in said affidavit. That among other things in the affidavit the said Lewis Morrell unlawfully, willfully, corruptly, falsely and feloniously swore he expected to be able to prove by James Coffee, an absent witness that he stopped at Centralia, and had been there two or three days previous to taking the cars for Indianopolis, Ind., and that he had several one hundred bills, and desired to get one bill changed to pay him the said Coffee some money, and that he had not small bills or
- 3 small money enough to pay said Coffee the amount said Morrell was owing him. Whereas said Morrell knew that he did not expect to and could not prove by said Coffee he had stopped in Centralia, two or three days as in the affidavit stated, but at the time referred to in the affidavit, came from a point south of Centralia, and further, said Lewis Morrell knew he did not expect and could not prove by Coffee that he desired to get a one hundred dollar bill changed to pay Coffee some money. That he did not expect and knew he could not prove by said Coffee, he had not small bills, or small money enough to pay said Coffee the amount he was owing him. On the contrary said Morrell at the time of swearing to the affidavit; well knew at the time and place mentioned in said affidavit he had on him and in his possession small bills or small money to the sum of one hundred and fifty dollars in Treasury Notes and bank bills in denominations of from one to ten
- 4 dollars. And among other things said Morrell in said affidavit swore that he expected to prove by one Wm. Grant, another absent witness, he had not small money enough to pay both without getting a one hundred dollar bill changed; whereas, said Lewis Morrell knew he did not expect, and could not prove by said Wm. Grant, or any one else, that he had not small money enough to pay both bills, but on the contrary, knew he had small money to pay one hundred dollars. That at the time and place referred to in said affidavit and that part last mentioned, he knew he had in his possession small bills and Treasury Notes of denominations from one to ten dollars amounting to one hundred and fifty dollars which was known to the said Morrell at the time he swore to the affidavit. And so the Grand Jurors do present that said Lewis Morrell, on the day and year aforesaid in the county aforesaid, did commit willful and corrupt Perjury contrary to the Statute &c.
AMOS WATTS, States Attorney."
- 5 Contains the cause, the name of the foreman of the Grand Jury, witnesses, date of filing Indictment, which was filed March 20th, 1863, J. O. Chance, Clerk. Afteward on the 23d day of March, A. D. 1863, the following order was made:
- 6 The People vs. Lewis Morrell. Indictment for Perjury. And now at this day, to-wit: 23d of March, 1863, this cause is called for trial, Watts, Attorney for the People, and Willard & Goodnow for the defendant. Defendant by his attornies moves the court to quash the Indictment herein, and the court refuses said motion. Defendant waives copy of Indictment, list of jurors and arraignment, and pleads not guilty; and issued being joined a jury came, and having heard the evidence retired, and afterward returned with the following verdict: "We the Jury find the defendant guilty in manner and form as charged, and fix the term of his confinement in the penitentiary at eighteen months." Which verdict the Court records.
- 7 And thereupon the defendant by his Attornies move the court for a new trial, which motion the court overruled and enters judgment on the verdict, and orders that the defendant, Morrell, stand convicted of perjury as in the indictment charged, and that he be confined in the penitentiary one

year and six months, and that the Sheriff execute the judgment of this court and deliver the body of said defendant to the authorities of the State Penitentiary.

9 Caption of cause in bill of exceptions. That on the 23d of March, 1863, the cause came on to be heard when the defendant by his attorneys, moved the court to quash the Indictment. Motion was overruled, and a jury called. W. W. Willard first testified: "I saw the defendant sign his name to the affidavit. It was signed March 19th, 1863, in Marion county, Ill." Jacob O. Chance testified: "I saw the defendant sign his name to the affidavit, he swore to the same before me on the 19th of March, 1863, in Marion county, Illinois."

10 The People then offered in evidence, the affidavit which was objected to by the defendant's counsel. Objections overruled by the court and the affidavit was read to the jury:

State of Illinois, Marion County, People vs. Lewis Morrell. Lewis Morrell being sworn say he was indicted at the present Term of this Court for obtaining Treasury notes under false pretence; he cannot safely proceed to trial and make a full defense, on account of the absence of James Coffee, that he expects to prove by said witness he was present at Odin in Marion county, Illinois, at the time of the alleged offence, charged in the said Indictment; that he has known defendant for over nine years; that he sustains a good moral character; has been engaged in honorable business during that time; that he (def't) was on his way to Indianapolis, Indiana; that he had stopped at Centralia, and been there two or three days previous to taking the cars for Indianapolis; that he had several One hundred dollar bills and desired to get a one hundred dollar bill changed to pay said Coffee some money, and had not small bills enough to pay said Coffee the amount he was owing him. That he expects to prove by Wm. Grant, he was with Morrell at the time of the alleged offence at Odin, and was in company with affiant from Memphis, and knew he had goods upon which there was to be paid charges to Grant, and that he had not small money to pay both without getting One hundred dollar bill changed; that he was going to proceed up the Chicago Branch Railroad, and Grant was going East from Odin, and he desired to pay him his money;— that Grant resides in Louisville, Kentucky.

11 That he expects to prove by Edward Taylor a resident of Springfield, Ills., he was sitting in the Railroad car in the seat behind affiant, at the time of the alleged offence, charged in said Indictment, and paid attention to what was said and the subject of Gold was not mentioned in said conversation. That affiant did not remove from his seat before he returned the money to Stephens. That he expects to have the testimony of the aforesaid witnesses at the next Term of this Court, and he knows of no other witnesses by whom he can prove the same facts, and that this affidavit is made that justice may be done and not for delay. (Signed) LEWIS MORRELL.

Sworn to before me 19th March, 1863. Filed March 19th, 1863. J. O. CHANCE, Clerk.

12 O. E. Willis, testified, I assisted in searching def't at the Station House in Centralia. We found in his vest pocket a ten dollar bill, and a one dollar bill, I asked def't if it was all he had he replied it was. I told him people carried money in their boots, he said he carried his there.— We pulled off his boots, and found one hundred and thirty-nine dollars, in one of them, in small bills, none larger than ten dollars. Mr. Storer assisted in the search: I found no Pocket-book, did not examine his under-shirt, might have been other money on him. We searched his pockets pulled off everything but his undershirt and drawers; there might have been two one hundred dollar bills in the seam of his undershirt, and we not known it. Defendant was locked in the Station House all night. This was on the 15th of Jan'y. 1863.

13 Samuel Storer, testified, the Def't was delivered to me about 8 o'clock p. m., on 15th of Jan'y. 1863; took him in a room and searched him, assisted by Mr. Willis; found a ten dollar bill and one dollar bill in his vest pocket, and one hundred and thirty-nine dollars in his boots; searched all his pockets, pulled off his clothes except under-shirt and drawers; he was locked up in a room in the Station House all night; he might had other money on him did not examine the seams of his undershirt.

The People introduce the minutes of the Court in a case of the People vs. Lewis Morrell, and a person whose name is unknown to the Grand Jury, indictment for obtaining treasury notes under false pretenses. Def't objects— objections overruled by the Court and minutes read to jury, to-wit: March 19th, motion to continue after indictment found on the affidavit of Def't Morrell. Application withdrawn, continuance withdrawn—cause set for Monday second week. W. W.

14 Willard recalled by whom, and Jacob O. Chance, they offered to prove materiality of such parts of Indictment as are contradicted in the indictment. Def't objects—ground: the jury are the judges of that fact from the evidence. Objection sustained. The People close.

15 Samuel R. Carrigan, Sheriff of Marion county, testified on behalf of the defense. Def't was delivered to me on 16th of Jan'y 1863, by Constable. Defendant, constable, and myself, slept together in the same bed in debtor's room in jail. Def't had no opportunity to communicate with any one after he was delivered to me, except constable and prisoners in jail.

16 W. W. Willard called, testified, I saw def't on the 17th Jan'y in the debtor's room in the jail take from the hem of his undershirt, two One hundred dollar Treasury notes to get bail. Def't. deposited two one hundred dollar Treasury notes with one hundred dollars received from Sheriff, with a man to go his security.

It is admitted by the People that James Coffee, absent witness, would testify he was at Odin on 15th Jan'y, 1863, when def't was arrested for obtaining money under false pretences; but not present at the arrest; that def't owed him one hundred and eighty-seven dollars, that def't was going to pay him said money; that he went to Odin to get the money from def't, and that def't borrowed said money from him last Fall at Indianapolis. The case closed and this was all the testimony in the case. The Court gave the following instructions hereto appended, to which Defendant objects. Signed and sealed 27th day of March, 1863.

AMOS WATTS, States Attorney.

LEWIS MORRELL, by WILLARD & GOODNOW, his Attorneys.

17 People vs Lewis Morrell. If you believe Defendant not guilty—verdict will be we the jury find the def't not guilty. Given.

If you find the def't guilty your verdict will be, we find def't guilty in manner and form charged in the indictment, and fix his confinement in the Penitentiary at _____ years, not less than one nor more than ten. Given.

If you believe from the evidence that Defendant in his affidavit referred to in Indictment, swore he expected to prove by Coffee or Grant, any fact mentioned in the affidavit as charged in the Indictment, that def't knew at the time he swore to said affidavit, that the fact or facts he swears he expects to prove, did not exist, that such pretended fact if proven by any witness would have been false, that such matter was material to the point in question upon the application for continuance, that Defendant knowingly, falsely, willfully, corruptly and seleniously swore to the affidavit mentioned in the Indictment, you should find def't guilty, if all other material allegations have been proved as charged in the indictment.

18

The Law presumes no man will commit perjury, and if you believe from the evidence that Defendant in his affidavit, stated any fact or facts as charged in the indictment in this cause, that such stated matter in said affidavit was material to the point in question on the application for continuance as charged in the indictment, that def't knew he was swearing falsely at the time he signed and swore to said affidavit, that he knew that the fact attempted to be shown in said affidavit was false and did not exist, all other material allegations being proved to your satisfaction, you should find def't guilty. Given.

I certify the foregoing record contains a full and true history of the proceedings on said trial.— Witness my hand and seal this 3rd of April, 1863.

SILAS L. BRYAN, Judge 2d Judicial Circuit, Ills. (L. S.)

19 Clerks' certificate, seal of Court and signature.

J. O. CHANCE, Clerk.

ERRORS ASSIGNED.

And now comes said Defendant by Willard & Goodnow his Attorneys, and sets down and assigns the following causes of error.

1. The Court erred in refusing to quash the Indictment: For that the Indictment does not show the facts sworn to in the affidavit were material to the issue.

2. The Indictment does not show that the case in which the affidavit was filed for a continuance had been tried, and defendant found guilty.

3. The Indictment does not show the Circuit Court of Marion County was in session at time the affidavit was made out and filed.

4. Does not show that a continuance was granted upon said affidavit in the case of the People vs. Lewis Morrell for obtaining Treasury notes under false pretence, nor issue joined in the cause.

5. Does not show the affidavit was sufficient to grant a continuance of said cause.

6. The Court erred in overruled defendant's motion for a new trial. The verdict was contrary to law and evidence.

7. The Court erred in admitting the affidavit in evidence without first proving J. O. Chance, was the Clerk of the Circuit Court of Marion County.

8. The Court erred in admitting the minutes of the court in a case of the People vs. Lewis Morrell, and a man whose name to the Grand Jury was unknown.

9. The Court erred in refusing the motion for a new trial, because the evidence shows the affidavit and continuance was withdrawn before the Indictment in this case was found.

10. The Court erred in permitting the third and fourth instruction to go to the jury.

11. And for for these and other manifest errors this cause ought to be reversed.

BRIEF.

The Indictment must set forth the former Indictment. Wharton Crim. Law, Sec. 2246 & 2252. Defendant is entitled to a continuance at the first term of Court after Indictment found, by offering bail: Revised Stat. page 183, Sections 175 and 176.

There must be proof of all the assignments of Perjury. 1 Greenleaf, page 339, sec. 247.

The jury are the judges of the Law and fact. Scates Stat. page 408, sec. 188.

November Term Sup^r. Court - 1863.

Lewis Mornell

Pliff in error

25

vs

Ernst to Mornell

The People - Deft in error

1863

Pliff, Certs.

To filing Record 20. Sub. Cause 12

32.

" " Papers

50

" Abstracts (700 pages)

9-80

" Cert. Orders

50

" " Opinions

1-60

Least bill & Sub. Cause

37-

Books for

6-00

19-09

Certs. Cop. Ord. & Opin. & Stamp 1

2-65

21-74

Spec Bill 50 - Postage 6 - Stamp 5

71

22-45

Ex. Papers \$11 - by good words

Exhibit clerk fee is not taxed
upon the transcript

Note Mornell & Goodnow
 at Salem. May 11. 64
 Record made by fee for same \$2-65.
 But. See fee by Mornell & Goodnow
 of 1857-74.

6
Leontide

entire page 588

1863

At a Supreme Court, of the State of Illinois,
begun and held at Mount Vernon, within
and for the first General Division of said State,
On Tuesday the tenth day of November, in
the year of our Lord one thousand eight-
hundred and sixty-three to-wit: On Tuesday
the seventeenth day of November, in the
year of our Lord one thousand eight hundred
and sixty-three.

Present, The Hon. Pinckney H. Walker, Associate Justice.
" " Sidney Press. " "

Lewis Monell.
Plaintiff in error } Error to
vs } Marion
The People Defendants in error.

On this day came again the said
parties, and the Court having diligently
examined and inspected, as well the
record and proceedings aforesaid, as the
matters and things therein assigned for
error, and being now sufficiently advised
of and concerning the premises, are of
opinion, that in the record and proceed-
ing aforesaid, and in the rendition of
the judgment aforesaid, there is manifest error:
Therefore it is considered by the Court,
that for this error and others in the
record and proceeding aforesaid, the

" Judgment of the Circuit Court in this behalf
" rendered, be reversed, Annulled, set aside,
" and wholly for nothing esteemed, And that
" this Cause be remanded to the Circuit
" Court for such other and further proceedings
" as to law and justice shall appertain.
" The whole with the Costs against the
" said Defendants in error."

" Walker J.

" This was an indictment for
" perjury, averred to have been committed, in
" swearing to an affidavit for a continuance of
" a case in the Marion Circuit Court. A
" motion was entered in this Court below, to
" quash the indictment, which was overruled
" by the Court. That decision, amongst
" other matters, is assigned for error. It is
" a familiar rule of pleading, that not only
" the falsity, but the materiality of the
" fact must appear from the averments in
" the indictment. It must also appear,
" that the oath was administered, by a
" person having competent legal author-
" ity, and that it was made in a judi-
" cial proceeding, or on some other lawful
" occasion, or for such a purpose. If the
" indictment be defective, in any of these
" particulars, it is insufficient, and should

on motion be quashed.

The affidavit in this case appears to have been made, with a view to an application for the continuance, of a cause then pending in the Court below. But it does not appear from the averments in the indictment, that such a motion had been made, or was afterwards interposed. Until such a motion was entered, this affidavit could not be material. If no such motion was ever made, it is not perceived, how it could be material, in obtaining a continuance or for any other purpose.

The averment in the indictment is this, "Said affidavit taken and there being a matter where by law an oath or affirmation is required, to set on application for a continuance of a cause then pending before said Court wherein the people were plaintiff and the said Lewis Morris was defendant. Indictment for obtaining United States Treasury notes under false pretenses." This is the only averment in reference to the proceeding in which the affidavit is supposed to have been made. It will be observed that there is an entire absence of averments, that a motion for a continuance was pending in

the Court, or that such a motion was afterwards
based upon the affidavit. This averment
seems to imply, that the affidavit, was the
motion for a continuance. It may have
been the basis for such a motion, but it in
no sense, could have been the motion itself.
Such affidavits are also used as evidence
on the trial of the motion, in reference
to which they are usually made. This is
the principal and material office of
such instruments. The application for
a continuance is based upon the grounds
that the party is unprepared to proceed
to trial, and an affidavit is generally
the evidence of that fact, and it is
material for that purpose. But the
application can be made, and the motion
tried without an affidavit or affirmation
being made or filed. Such an affidavit
could, in no sense, be material on the trial
of the cause itself, as it could not be
used, except by consent. Until such
consent was obtained, the facts it contained
could not be material to the issues involved
in the case. Nor is there any averment
that it was ever material to those issues.
This indictment should have contained
an averment, that a cause was pending in
the Court, and that an application for

" its continuation had been made, and that
" on the hearing of this motion, the affidavit
" was material, and then have shown what
" facts sworn to in the affidavit were false,
" and assign the perjury. In the first three
" of these particulars, this indictment is
" defective.

" Again, there was no evidence, that
" J O Chamm, before whom the affidavit
" was made, and who administered the
" Oath, was the Clerk of the Circuit Court
" or was at the time acting as such. He
" testifies, that he saw the accused sign
" the affidavit, and that he administered
" the Oath on the day it bears date, and
" that it was done in Marion County.

" To procure a conviction in a case of
" this character, it is requisite that it
" should be proved, that the person
" before whom the Oath was taken was
" authorized by law to administer it.
" West. Crim. Law 664, and authorities
" cited. Arch. Crim. Pleadings 430. Rex vs
" Buelst 3 Camp 432. Proof that the person
" habitually acted in the capacity of a
" particular officer, is perhaps only prima-
" facie evidence of the fact, but until reb-
" utted it is sufficient, without producing his
" appointment or commission. But in this

" can the Clerk's jurat was not verified by the
" Seal of the Court; there was no evidence that
" he was in the habit of acting as Clerk, nor
" that he was legally filling the office. This being
" a material allegation and failing to prove
" it the Court below erred in refusing to
" grant a new trial.

" The judgment is reversed and the
" cause remanded."

" Judgment Reversed."

State of Illinois, S. C.

Supreme Court of said State.

First Grand Division.

" J. Noah Johnston, Clerk of the Supreme Court,
" within and for the first Grand Division of the State
" of Illinois, do hereby Certify that the foregoing is
" a true and perfect copy of the final order, and
" of the opinion of the said Supreme Court, in
" the above entitled and therein styled Cause,
" as the same appears of record in my office.

" In Testimony Whereof, I have
" hereunto set my hand and affixed
" the Seal of the Supreme Court of said
" State, this tenth day of May, in
" the year of our Lord one thousand
" eight hundred and Sixty-four.



Lewis Morrell
vs
The People

ABSTRACT.

In Supreme Court---1st Grand Division, in the State of Illinois.

THE PEOPLE,
vs.
LEWIS MORRELL, } INDICTMENT FOR PERJURY.

1 Shows caption by the Clerk of the proceeding had in this cause. That on the 20th day of March, 1863, the Grand Jurors brought into and presented in open Court an Indictment against Lewis Morrell. Caption of Indictment: "State of Illinois, Marion county, ss. Of the March term of the Marion Circuit Court, in the year of our Lord, 1863. The Grand Jurors &c., present that Lewis Morrell, on the 19th of March, 1863, in the County of Marion before Jacob O. Chance, Clerk of the Marion Circuit Court, did then and there subscribe his name, and upon oath depose and say the statements contained in the affidavit, he so then and there subscribed his name were true, said affidavit being a matter whereby law and oath is required, to-wit: an application for continuance of a cause then pending before said Court, wherein, the People were plaintiffs and said Lewis Morrell, defendant. Indictment for obtaining United States Treasury Notes under false pretences. Jacob O. Chance, as Clerk aforesaid having competent and full authority by law to administer the oath to said Lewis Morrell, all the matters charge as false in said affidavit being material in the application for continuance of said cause, and material to the point in question in said affidavit. That among other things in the affidavit the said Lewis Morrell unlawfully, willfully, corruptly, falsely and feloniously swore he expected to be able to prove by James Coffee, an absent witness that he stopped at Centralia, and had been there two or three days previous to taking the cars for Indianapolis, Ind., and that he had several one hundred bills, and desired to get one bill changed to pay him the said Coffee some money, and that he had not small bills or small money enough to pay said Coffee the amount said Morrell was owing him. Whereas said Morrell knew that he did not expect to and could not prove by said Coffee he had stopped in Centralia, two or three days as in the affidavit stated, but at the time referred to in the affidavit, came from a point south of Centralia, and further, said Lewis Morrell knew he did not expect and could not prove by Coffee that he desired to get a one hundred dollar bill changed to pay Coffee some money. That he did not expect and knew he could not prove by said Coffee, he had not small bills, or small money enough to pay said Coffee the amount he was owing him. On the contrary said Morrell at the time of swearing to the affidavit; well knew at the time and place mentioned in said affidavit he had on him and in his possession small bills or small money to the sum of one hundred and fifty dollars in Treasury Notes and bank bills in denominations of from one to ten dollars. And among other things said Morrell in said affidavit swore that he expected to prove by one Wm. Grant, another absent witness, he had not small money enough to pay both without getting a one hundred dollar bill changed; whereas, said Lewis Morrell knew he did not expect, and could not prove by said Wm. Grant, or any one else, that he had not small money enough to pay both bills, but on the contrary, knew he had small money to pay one hundred dollars. That at the time and place referred to in said affidavit and that part last mentioned, he knew he had in his possession small bills and Treasury Notes of denominations from one to ten dollars amounting to one hundred and fifty dollars which was known to the said Morrell at the time he swore to the affidavit. And so the Grand Jurors do present that said Lewis Morrell, on the day and year aforesaid in the county aforesaid, did commit willful and corrupt Perjury contrary to the Statute &c.

AMOS WATTS, States Attorney."

5 Contains the cause, the name of the foreman of the Grand Jury, witnesses, date of filing Indictment, which was filed March 20th, 1863, J. O. Chance, Clerk. Afteward on the 23d day of March, A. D. 1863, the following order was made:

6 The People vs. Lewis Morrell. Indictment for Perjury. And now at this day, to-wit: 23d of March, 1863, this cause is called for trial, Watts, Attorney for the People, and Willard & Goodnow for the defendant. Defendant by his attornies moves the court to quash the Indictment herein, and the court refuses said motion. Defendant waives copy of Indictment, list of jurors and arraignment, and pleads not guilty; and issued being joined a jury came, and having heard the evidence retired, and afterward returned with the following verdict: "We the Jury find the defendant guilty in manner and form as charged, and fix the term of his confinement in the penitentiary at eighteen months." Which verdict the Court records.

7 And thereupon the defendant by his Attornies move the court for a new trial, which motion the court overruled and enters judgment on the verdict, and orders that the defendant, Morrell, stand convicted of perjury as in the indictment charged, and that he be confined in the penitentiary one

year and six months, and that the Sheriff execute the judgment of this court and deliver the body of said defendant to the authorities of the State Penitentiary.

- 9 Caption of cause in bill of exceptions. That on the 23d of March, 1863, the cause came on to be heard when the defendant by his attorneys, moved the court to quash the Indictment. Motion was overruled, and a jury called. W. W. Willard first testified: "I saw the defendant sign his name to the affidavit. It was signed March 19th, 1863, in Marion county, Ill." Jacob O. Chance testified: "I saw the defendant sign his name to the affidavit, he swore to the same before me on the 19th of March, 1863, in Marion county, Illinois."
- 10 The People then offered in evidence, the affidavit which was objected to by the defendant's counsel. Objections overruled by the court and the affidavit was read to the jury:
State of Illinois, Marion County, People vs. Lewis Morrell. Lewis Morrell being sworn say he was indicted at the present Term of this Court for obtaining Treasury notes under false pretence; he cannot safely proceed to trial and make a full defense, on account of the absence of James Coffee, that he expects to prove by said witness he was present at Odin in Marion county, Illinois, at the time of the alleged offence, charged in the said Indictment; that he has known defendant for over nine years; that he sustains a good moral character; has been engaged in honorable business during that time; that he (def't) was on his way to Indianapolis, Indiana; that he had stopped at Centralia, and been there two or three days previous to taking the cars for Indianapolis; that he had several One hundred dollar bills and desired to get a one hundred dollar bill changed to pay said Coffee some money, and had not small bills enough to pay said Coffee the amount he was owing him. That he expects to prove by Wm. Grant, he was with Morrell at the time of the alleged offence at Odin, and was in company with affiant from Memphis, and knew he had goods upon which there was to be paid charges to Grant, and that he had not small money to pay both without getting One hundred dollar bill changed; that he was going to proceed up the Chicago Branch Railroad, and Grant was going East from Odin, and he desired to pay him his money;—
- 11 that Grant resides in Louisville, Kentucky.
- 12 That he expects to prove by Edward Taylor a resident of Springfield, Ills., he was sitting in the Railroad car in the seat behind affiant, at the time of the alleged offence, charged in said Indictment, and paid attention to what was said and the subject of Gold was not mentioned in said conversation. That affiant did not remove from his seat before he returned the money to Stephens. That he expects to have the testimony of the aforesaid witnesses at the next Term of this Court, and he knows of no other witnesses by whom he can prove the same facts, and that this affidavit is made that justice may be done and not for delay. (Signed) LEWIS MORRELL.
Sworn to before me 19th March, 1863. Filed March 19th, 1863. J. O. CHANCE, Clerk.
- 13 O. E. Willis, testified, I assisted in searching def't at the Station House in Centralia. We found in his vest pocket a ten dollar bill, and a one dollar bill, I asked def't if it was all he had he replied it was. I told him people carried money in their boots, he said he carried his there.— We pulled off his boots, and found one hundred and thirty-nine dollars, in one of them, in small bills, none larger than ten dollars. Mr. Storer assisted in the search: I found no Pocket-book, did not examine his under-shirt, might have been other money on him. We searched his pockets pulled off everything but his undershirt and drawers; there might have been two one hundred dollar bills in the seam of his undershirt, and we not known it. Defendant was locked in the Station House all night. This was on the 15th of Jan'y. 1863.
- 14 Samuel Storer, testified, the Def't was delivered to me about 8 o'clock P. M., on 15th of Jan'y. 1863; took him in a room and searched him, assisted by Mr. Willis; found a ten dollar bill and one dollar bill in his vest pocket, and one hundred and thirty-nine dollars in his boots; searched all his pockets, pulled off his clothes except under-shirt and drawers; he was locked up in a room in the Station House all night; he might had other money on him did not examine the seams of his undershirt.
- The People introduce the minutes of the Court in a case of the People vs. Lewis Morrell, and a person whose name is unknown to the Grand Jury, indictment for obtaining treasury notes under false pretenses. Def't objects—objections overruled by the Court and minutes read to jury, to-wit: March 19th, motion to continue after indictment found on the affidavit of Def't Morrell. Application withdrawn, continuance withdrawn—cause set for Monday second week.
- 15 Willard recalled by whom, and Jacob O. Chance, they offered to prove materiality of such parts of Indictment as are contradicted in the indictment. Def't objects—ground: the jury are the judges of that fact from the evidence. Objection sustained. The People close.
- Samuel R. Carrigan, Sheriff of Marion county, testified on behalf of the defense. Def't was delivered to me on 16th of Jan'y 1863, by Constable. Defendant, constable, and myself, slept together in the same bed in debtor's room in jail. Def't had no opportunity to communicate with any one after he was delivered to me, except constable and prisoners in jail.
- W. W. Willard called, testified, I saw def't on the 17th Jan'y in the debtor's room in the jail take from the hem of his undershirt, two One hundred dollar Treasury notes to get bail. Def't.
- 16 deposited two one hundred dollar Treasury notes with one hundred dollars received from Sheriff, with a man to go his security.

It is admitted by the People that James Coffee, absent witness, would testify he was at Odin on 15th Jan'y, 1863, when def't was arrested for obtaining money under false pretences; but not present at the arrest; that def't owed him one hundred and eighty-seven dollars, that def't was going to pay him said money; that he went to Odin to get the money from def't, and that def't borrowed said money from him last Fall at Indianapolis. The case closed and this was all the testimony in the case. The Court gave the following instructions hereto appended, to which Defendant objects. Signed and sealed 27th day of March, 1863.

AMOS WATTS, States Attorney.

LEWIS MORRELL, by WILLARD & GOODNOW, his Attorneys.

- 17 People vs Lewis Morrell. If you believe Defendant not guilty—verdict will be we the jury find the def't not guilty. Given.

If you find the def't guilty your verdict will be, we find def't guilty in manner and form charged in the indictment, and fix his confinement in the Penitentiary at _____ years, not less than one nor more than ten. Given.

- 18 If you believe from the evidence that Defendant in his affidavit referred to in Indictment, swore he expected to prove by Coffee or Grant, any fact mentioned in the affidavit as charged in the Indictment, that def't knew at the time he swore to said affidavit, that the fact or facts he swears he expects to prove, did not exist, that such pretended fact if proven by any witness would have been false, that such matter was material to the point in question upon the application for continuance, that Defendant knowingly, falsely, willfully, corruptly and feloniously swore to the affidavit mentioned in the Indictment, you should find def't guilty, if all other material allegations have been proved as charged in the indictment.

The Law presumes no man will commit perjury, and if you believe from the evidence that Defendant in his affidavit, stated any fact or facts as charged in the indictment in this cause, that such stated matter in said affidavit was material to the point in question on the application for continuance as charged in the indictment, that def't knew he was swearing falsely at the time he signed and swore to said affidavit, that he knew that the fact attempted to be shown in said affidavit was false and did not exist, all other material allegations being proved to your satisfaction, you should find def't guilty. Given.

I certify the foregoing record contains a full and true history of the proceedings on said trial.— Witness my hand and seal this 3rd of April, 1863.

SILAS L. BRYAN, Judge 2d Judicial Circuit, Ills. (L. S.)

- 19 Clerks' certificate, seal of Court and signature.

J. O. CHANCE, Clerk.

ERRORS ASSIGNED.

And now comes said Defendant by Willard & Goodnow his Attorneys, and sets down and assigns the following causes of error.

1. The Court erred in refusing to quash the Indictment: For that the Indictment does not show the facts sworn to in the affidavit were material to the issue.
2. The Indictment does not show that the case in which the affidavit was filed for a continuance had been tried, and defendant found guilty.
3. The Indictment does not show the Circuit Court of Marion County was in session at time the affidavit was made out and filed.
4. Does not show that a continuance was granted upon said affidavit in the case of the People vs. Lewis Morrell for obtaining Treasury notes under false pretence, nor issue joined in the cause.
5. Does not show the affidavit was sufficient to grant a continuance of said cause.
6. The Court erred in overruled defendant's motion for a new trial. The verdict was contrary to law and evidence.
7. The Court erred in admitting the affidavit in evidence without first proving J. O. Chance, was the Clerk of the Circuit Court of Marion County.
8. The Court erred in admitting the minutes of the court in a case of the People vs. Lewis Morrell, and a man whose name to the Grand Jury was unknown.
9. The Court erred in refusing the motion for a new trial, because the evidence shows the affidavit and continuance was withdrawn before the Indictment in this case was found.
10. The Court erred in permitting the third and fourth instruction to go to the jury.
11. And for for these and other manifest errors this cause ought to be reversed.

BRIEF.

The Indictment must set forth the former Indictment. Wharton Crim. Law, Sec. 2246 & 2252. Defendant is entitled to a continuance at the first term of Court after Indictment found, by offering bail: Revised Stat. page 183, Sections 175 and 176.

There must be proof of all the assignments of Perjury. 1 Greenleaf, page 339, sec. 247.

The jury are the judges of the Law and fact. Scates Stat. page 408, sec. 188.

25
Lewis Morrell
vs
The People

The jury see the Judge of the law and fact. Cases Stat. page 403, sec. 126.
There must be proof of all the assignments of Perjury. 1 Greenleaf, page 339, sec. 214.
The indictment must set forth the former indictment. Watson Clin. Law, Sec. 2516 & 2523.

P R I M E R

- 11. And for for these and other material errors this cause ought to be reversed.
- 10. The Court erred in permitting the third and fourth instruction to go to the jury.
- 9. The Court erred in refusing the motion for a new trial, because the evidence shows the aff-
Morrell, and a man whose name to the Grand Jury was unknown.
- 8. The Court erred in admitting the minutes of the court in a case of the People vs Lewis
was the Clerk of the Circuit Court of Marion County.
- 7. The Court erred in admitting the affidavit in evidence without first proving J. O. Chance,
to be the said witness.

- 6. The Court erred in admitting a motion for a new trial. The Court
vs Lewis Morrell for perjury. The Court notes under this sentence, for same joined in the cause
4. Does not show that a continuance was granted upon said affidavit in the case of the People
the affidavit was made out and filed.
- 3. The indictment does not show the Grand Court of Marion County was in session
had been tried, and independent found guilty.
- 2. The indictment does not show that the case is within the jurisdiction of the Court.
show the facts upon which the affidavit was material to the indictment. For that the indictment
is the Court erred in refusing to quash the indictment. For that the indictment
signs the following names or error.
- And now said Defendant by Lewis & Co. Attorneys, and sets forth
J. O. CHANCE, Clerk of Court and Justice of the Peace for the County of Marion, Ind.

Abstract

Office
8427

Filed Nov. 9. 1863.
By Johnston Clerk

- 12. I certify the record contains a full and true history of the proceedings on the
and did not admit all other material allegations before mentioned, and which
and swore to said affidavit, that he knew that the fact attempted to be shown in said affidavit was
name as charged in the indictment, that defendant knew he was answering falsely at the time he signed
stated matter in said affidavit was material to the point in question on the application for contin-
defendant in his affidavit, stated only fact or facts as charged in the indictment in this cause, that such
The law presumes no man will commit perjury, and if you believe from the evidence that De-
have been proved as charged in the indictment.
affidavit mentioned in the indictment, you should find defendant guilty. If all other material allegations
continuance, that Defendant knowingly, falsely, willfully, corruptly and feloniously swore to the
have been false, that such matter was material to the point in question upon the application for
swears he expects to prove did not exist, that such perjured fact if proven by any witness would
dictment, that defendant knew at the time he swore to said affidavit, that the fact or facts he
he expected to prove by Coffey or Grant, any fact mentioned in the affidavit as charged in the in-
If you believe from the evidence that Defendant in his affidavit referred to in indictment, swore
more than ten. Given.
- 11. If you find the defendant guilty your verdict will be, we find defendant guilty in manner and form charged
the defendant not guilty. Given.
- 10. People vs Lewis Morrell. If you believe Defendant not guilty—verdict will be we the jury find
LEWIS MORRELL, by WILLIAM & GOODROW, his Attorneys.
- 9. AMOS WATTS, States Attorney.

and objects. Signed and sealed 27th day of March, 1863.
money in the case. The Court gave the following instructions before appended, to which Defend-
rowed said money from him last Fall at Indianapolis. The case closed and this was all the testi-
ing to pay him said money; that he went to Ohio to get the money from defendant, and that defendant por-
sant at the arrest; that defendant owed him one hundred and eighty-seven dollars, that defendant was Go-
10th Jan'y, 1863, when defendant was arrested for obtaining money under false pretences; but not per-
It is admitted by the People that James Coffey, absent witness, would testify he was at Ohio on