

8748

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

# Supreme Court of Illinois

D. Campbell

---

vs.

People

---



1  
Trial held before the Hon. William H. Taft  
Presiding Judge of the Massac Circuit Court  
To wit

The People of the State of Illinois }  
vs } Murder  
Deceator Campbell }

Do it Reminded  
that the Grand Jurors chosen in and for the  
County of Massac and State of Illinois, to serve  
at the same Term A.D. 1854 of the said Massac  
Circuit Court, returned into Court the Indict-  
ment in the above styled Cause which said  
Indictment is in the words and figures following  
To wit:

State of Illinois }  
Massac County } } "Of the same Term of  
"the Massac Circuit Court  
"in the Year of our Lord  
"one thousand eight hun-  
"dred and fifty four

"The Grand Jurors chosen Selected and Sworn in  
"and for the County of Massac, in the name and  
"by the Authority of the People of the State of Il-  
"linois, upon their oaths present, that Deceator  
"Campbell, late of the County aforesaid, not having  
"the fear of God before his eyes, but being moved  
"and seduced by the instigation of the Devil, on  
"the sixth day of December, in the year of our  
"Lord one thousand eight hundred and f-  
"thirty, with force and arms, at the County  
"of Massac, and State of Illinois, in and  
"upon one Goodwin Parker, in the face of  
"God, and the People aforesaid, then and  
"there being unlawfully feloniously Willfully  
"and of his Malice aforethought did make  
"an Assault, and that the said Deceator can



"phell, with a certain knife which he the said  
 "Deacon Campbell in his right hand then and  
 "then had and held, the said Goodwin Parker  
 "in and upon the left side of the breast of him  
 "the said Goodwin Parker then and there in  
 "lawfully feloniously wilfully and of his Malice  
 "aforethought did strike and thrust, giving to the  
 "said Goodwin Parker, then and there with the  
 "knife aforesaid, in and upon the said left  
 "side of the breast of him the said Goodwin  
 "Parker one mortal wound, of the breadth of two  
 "inches and of the depth of six inches of which  
 "said mortal wound, the said Goodwin Parker  
 "on the said ninth day of December in the  
 "Year aforesaid for the space of one hour of  
 "the same day of the same month of December  
 "in the year aforesaid at the County and State  
 "aforesaid did languish and languishing did  
 "live, on which said ninth day of December  
 "in the year aforesaid, the said Goodwin  
 "Parker, at the County aforesaid and State  
 "aforesaid, of the said mortal wound died,  
 "And so the Jurors aforesaid, in the name  
 "and by the Authority aforesaid, upon their  
 "oaths aforesaid do say that the said Deacon  
 "Campbell, the said Goodwin Parker in  
 "manner and form aforesaid, unlawfully fe-  
 "loniously wilfully, and of his malice afore-  
 "thought 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

John A. Logan

State Attorney



And afterwards To wit at the said June Term  
A D 1854 of said Massac Circuit Court on the 10th  
day of said term the following Order was duly  
and regularly entered of Records as among the  
Judicial proceedings of said Court, To wit,

The People &c }  
V S } Murder  
Decatur Campbell }

And now on this day came  
the parties, the People by their State attorney and  
the Defendant in his own proper person was  
brought to the bar, and a copy of the in-  
dictment herein and a list of the Grand Jurors  
in service and a list of the Witnesses for the  
People were furnished to the Defendant, then  
the Defendant made application on oath that  
counsel be by the Court appointed to his  
defense, whereupon by the request of the defend-  
ant, J. didick Pack Esqr, an Attorney of  
this Court, is appointed to defend, and the  
Defendant Being arraigned, for plea said  
not guilty, and of this he puts himself upon  
the Country, and the parties having joined  
Issue, therefore let a Jury come, and there-  
fore came a Jury To wit, James Munie 1  
Hemming Palmer 2, Alfred Copland 3,  
Marion Maddox 4 Francis Dunton 5, John  
A. Crittenden 6 William F. Seague 7, Malachi  
Drayman 8 Reubens Wilson 9 Jeremiah Mizell  
10 John H. Childs 11 and Robert H. Lick  
12, who being elected tried and sworn the  
truth to speak upon the Issue joined upon  
their oaths do say we the Jury find the defend-  
ant guilty of Manslaughter, and we for the term  
of his confinement in the Penitentiary at eight



years. And afterwards So that on the Eleventh day of said Term of said Court the following Order was entered of Record as among the Judicial proceedings of said Court To wit,

The People  
v  
Deceator Campbell

Murder

Defendant enters a motion for a new trial and in arrest of Judgment. -

And afterwards So that on the thirteenth and last day of said Term of said Court the following Order was made in the above styled Cause To wit,

The People  
v  
Deceator Campbell

Murder

Came again the parties by their attorney (the Defendant being present at the Bar) and it is Ordered by the Court, that the motion herein made for a new trial and in arrest of Judgment be Overruled. The Defendant then being asked Whether he had any thing further to say Why Judgment should not be Entered and pronounced upon him, as by the Jurors aforesaid upon their oaths aforesaid have determined, answered that he had nothing more to say. - Therefore it is Con- sidered by the Court that the defendant be sentenced to Confinement in the Peniten- tiary of the State of Illinois for the term of Eight Years, as the Jurors aforesaid have

Which motion for new trial at the Court was then referred to writing & filed on the 19th Term 1854 in the usual manner following To wit.  
"The Jurors by his counsel move the Court for grant a new trial in this cause" "on the grounds that the verdict is against the laws the order, on 17th Jan. 1854"

\*



determined. All of which time shall be at hard labor excepting Sun days which time of Sun day shall be in Solitary Confinement; that the Sheriff convey and deliver to the warden of the Penitentiary, the Body of the said De catur Campbell, taking the Wardens receipt for the same and that the said Sheriff take to his assistance as many Guards as shall be absolute; necessary, for the safe delivery of the said Campbell to the Warden at the said Penitentiary &c &c

Whereup the following bill of Exceptions was signed sealed and filed in the above styled cause, said bill being in the words and figures following; To wit,

|                    |   |                         |
|--------------------|---|-------------------------|
| People of Illinois | } | Indictment charging     |
| De catur Campbell  |   |                         |
|                    | } | Keft with the murder    |
|                    |   |                         |
|                    |   | of Goodwin Parker       |
|                    |   | Some Term, Circuit      |
|                    |   | Court of Massac Co Ills |
|                    |   | A. D. 1854              |

Be it Remembered that at the June Term of the Massac Circuit Court aforesaid when the above cause of the People vs De catur Campbell (a man of color) was called and came on for trial, the defendant having been arraigned, and having pleaded not guilty to the indictment and put himself upon his country for trial, and a Jury being called, selected and sworn to well and truly try the Issue joined between the People of the State of Illinois and the said De catur Campbell, the following Witness were called and sworn by the People viz 1<sup>st</sup> Joseph Dupree, sworn



G

Said: I was present when deceased came to his death. The deceased, Gordon Parker, myself James H. Parker & William Warren started from the house of one Guskay, a German, together, and went on towards Campbell's House, Father of Deft & where Deft resided, dead said when we started from Guskay's house, that he would have Deft, if he was on the top side of East, & fetch him to Justice. Dead asked me if I would go along and help, and asked Mr Warren if he would go & help. James H. Parker went along also, we all stopped twenty-five or thirty, or forty <sup>yards</sup> on this side of Campbell's house. When we stopped, at that place G. Parker, the dead went on to the door of Campbell, and was to fetch a hollow, if Deft was there. When dead got to the door, he hollowed and and the conspiracy ran up. When we got to the house, they, Deft, and dead, then on the other side of the house North of the house, about as far from the house as it was from the place where we stopped at the house for Parker to go. When I run down the hill from the house to where dead & Defendant were, two women and a boy were standing three or four steps to the left of Deft & Deft. Deft got up from Parker Dead, about half past. We aimed to catch him if we could & I run on after him, & was getting over the fence to my left hand I think when Parker hollowed out he has "killed me". Deft got up from the bench, I can't tell how they lay; when I got to dead, after this, W. Warren was trying to lift him up. I said Gordon are you hurt - he said nothing.



William Wauer and me took him up & carried him twenty-five thirty or forty yards, he said boys lay me down quick. We laid him down on his side on a chunk and he put his hands together, and I heard him speak no more. We went to Guskys & laid him in his house, Guskys house and he there breathed the last. I am not sure he may have breathed his last before we got him in the house. There was a wound in his left side, between pit of Stomach & left nipple. I thought ~~through~~ through three fourths of an Inch wide, do not know how deep. It looked as if made with small knife, he had not bled much that I saw. This was about the month of December 1853. Captain hundred and fifty three. In this Company, I saw no one engaged with Deft but Deft.

On Cross Examination he said - It was in the night time we went to Campbells house early, about one and a half hours or two hours after night. Three others beside me went with dect. Goodwin Parker, the dect took a hatchet with him. When we started to Campbells house where deft lived with his father, Well there was a gun taken by some of the others in the Company. I had a knife & pocket knife I had carried seven or eight years. my knife had one blade and a hickory back handle, the blade was three inches long I suppose, narrow blade. I think I did not hear any one say at the time it happened that he had killed a damned Nigger. We were all excited before we started to Campbells House & had been



drinking some, I did not know of Dec'd  
 having drunk more than once or twice. There  
 was a gun fired before we got to the  
 House where, aft. his family Father and  
 family lived, that was fired at Guskys  
 I find it was springing the triggers  
 and it went off by accident. Guskys  
 is one hundred and fifty or two hundred  
 yards from Campbell's house. I think at  
 the place where Dec'd was heard a gun fired  
 also. I think it was James Henry Parker  
 fired the gun last time. When it was fir-  
 ed it was not pointed towards the Deft,  
 I don't know whether it fired accidentally  
 or not. I was watching the gun when it  
 fired. The deft had got up and was run-  
 ning, he had got over the fence and  
 was running down the hill through  
 the bushes east side of the fence. I was  
 running after him, or I think maybe  
 I was on the fence, or getting over it  
 at the time the gun fired - James  
 H Parker was in the inside of the field  
 where Dec'd lay when he fired the gun he  
 kind me. I looked round just as it fired  
 so quick that I think he had not time to  
 move it. I was going on after Deft. But  
 I looked over my shoulder behind me as  
 the gun fired - Prosecution resumed the  
 Examination. Dec'd said when he sta-  
 ted there from Guskys that he would  
 have Deft & bring him to Justice. I  
 saw the hatchet Dec'd had with him  
 lying on the ground near me. My  
 knife was not out of my pocket that night.



John A Parker

9  
James A Parker was there called & sworn  
and said, I was there the night in question  
we started after the Nigger, and asked  
Dupue & Warren if they would go up with  
us, When I run up towards where it hap-  
pened the women were running down the  
hill on the other side of Campbells house  
from where we started & come up, The three  
were on dead, I mean Deft, his Mother & Sister  
Deft Broke over the fence, Dupue & Warren  
came & took hold of dead, he was struck  
in the left side, near his heart, he said  
he has killed me I did not see any other  
man fight him at the time, When I  
run up to where they were in the hollow  
inside of the fence, the dead and Deft,  
were together, and the woman turned  
around on me, Was in the night in  
Molac cavity Dupue was along, Goodwin  
Parker was my Father, he was well and  
sound before that, the cut was a small  
place, it bled right smart,

+  
On cross Examination Vitrous said when  
we went there we went along a path in  
the field from Gusbys house to Campbells  
House, We all stopped may be sixty yards  
before we got to Campbells house no noise  
except talking among ourselves, Gusbys  
House not over four hundred ~~and~~ yards  
from Campbells House, We stopped in the  
path when the fence and it come close to  
gether before we got to Campbells House  
As you go from Gusbys to Campbells the  
path and fence on the left hand come  
still more together as you go up and  
before getting to Campbells house they meet



and that was the place we Stopt, Father  
 went on to Campbells Door, & we were to stand  
 there & if Aft was there, Father was to  
 hallow. He called and said, here he is  
 Boy, I could not see what was done  
 at the door from where we stand on  
 account of darkness, but there was  
 + obstacle to prevent us from seeing but  
 the darkness. I dont recollect of my Father  
 saying any thing more at the door, but  
 what I have stated, when he called at the  
 door of Campbells, we all run up, we saw  
 no one at the house when we passed it  
 they had run or beyond down a hill  
 the fence on their left hand as they run  
 down. When I got to the house I  
 saw the woman running down the hill  
 on the other side after the Aft & Aft,  
 Aft & Aft, were before the woman  
 going down the hill, or I do not know  
 which I am furthest, I saw the woman  
 going down and when I got to the ra-  
 vinn or hollow, Aft & Aft & the woman  
 + ~~by~~ were there. I got there the first  
 one of those who stopped with me on the  
 other side of the house, & the others together  
 right after me. I saw no one else de-  
 ed. Frank, a brother of Aft was near  
 there between that and the house & did  
 not hear any of them call for mercy. It  
 was soon after I got there that Aft  
 broke loose & ran down hill east  
 side the fence, they had run on  
 right past the house from where we  
 stopped, when Aft went to the door,



The ground beyond the house was descending & they were, said deid & left, were about the ravine or may be a little on the other side. deid had the gun but gave it to me, it was a rifle gun & was charged. I dont know who loaded it. It was loaded at Custer's. While I was in the house. In passing Campbells house we left the house & fence on our left hand. The door was at the side towards the field & to go into the house we would have turned to the left, I recollect no hollowing at the time but what I did myself.

John Warren was then sworn & said I knew nothing of the matter till next morning. I was one of the coroners inquist saw deid after death Warrard half an Inch wide - And it was right below the left nipple, on a line to the pit of the stomach. We saw an old shoe knife worn off at the point so as come to a sharp point which we put in the wound it would go in an Inch or two - We found it sticking in the shed -

Tom Warren was then ~~sworn~~ called & sworn & said I was there at the time it occurred. I was standing opposite Campbells door Parker, the deid & two women were together, near the fence. I could hear cicks, but could not see the strokes. Gardner Parker had hold of him left. The left broke loose & Tom Parker cried out he has killed me. I made to him and he knew me

John Warren

W. Warren



+ Said I am a dead man. I followed to  
 Dupree to come. Parker was killed & we  
 tried to take him away & he spoke & said  
 lay me down & he died there. Mason Massie  
 County +. On Cross Examination, he said  
 + I was on top of the hill furthest Campbells  
 Door. I went up with Dupree & Parker  
 Dupree & John H. Parker, run up to  
 the place before me. I stopped furthest  
 the door - House is on top of the hill  
~~Campbell~~ Parker caught Deft. at the  
 hollow north of the house. The woman  
 came back up the Hill towards the  
 House, as I went on down. In going  
 up to the House they passed me on  
 the left between me and the fence.  
 Deed took a hatchet with him when  
 he went to Campbells Door. When he  
 went to the door, Deed said here boys  
 here boys come on. I dont recollect if  
 Deed hollowing after he passed the house.  
 There was a crop of corn standing in  
 the field before Campbells Door.  
 Sampson Peachroof was there.  
 called and sworn & said I saw the  
 deft the great day at Esq. Glannings  
 he, his mother & sister were arrested and  
 taken there, he and his sister were wash-  
 ing at Glannings at the door under  
 the shed, he said to her, I run last  
 night for my life, or to save my life  
 & I have a notion to do so to day, that  
 was a center lick I gave him last night  
 Mr A. L. M. McBean, was then called and  
 sworn & said, I am a Physician here

D. Peachroof



heard the wound described by the witnesses  
I think it was the cause of Parkers death.  
Prosecution here rested.

In Defendant then called Samuel  
Yandel, Robert Harris, Willis Guskay,  
George W. Washburn, Samuel Brandon,  
Samuel Yandel being called and  
sworn said I live a quarter & half  
Quarter mile from where Campbell  
lived at the time in question. I heard  
the noise to my house the night did  
& others went to Campbells House the same  
night the did. It took place two  
hours after dark. Guskays House is  
very near by on a direct line from my  
house to Campbells House - The first  
thing I heard was a gun fire in that  
direction - I walked on thirty or forty yards  
to my door, & then in a short time I  
heard some one call these words, Come  
on boys, Come on boys, the Damned  
Nigger has shot. Directly after that I  
heard the same words repeated, Come  
on boys, Come on boys, the Damned  
Nigger has shot, then a crying and  
Lamentation was made, and some one  
said Lord Jesus how can I stand it,  
about this time I heard another gun  
fired, just after the Lamentation. Guskay  
House and Campbells house, are both in  
the same field & the field is small,  
Path leading up to Campbells House from  
Guskay, gradually approaches the fence as  
you go on towards Campbells, Guskay  
House is some distance from the fence.  
Campbells house is at the fence

Samuel Yandel



14

Path from Guskys to Campbells Course to the fence, may be fifty yards before you get to Campbells house, I say deft that night before this noise took place he had a bruise on his head not breaking the skin, as if done with a stroke of a mans hand. Skin was not broke at the place I saw - I saw the wound on Head, was one of the Coroners inquest, Wound was half an Inch wide, as if done with keen Sharp knife left side, near the heart. First gun I heard fire was twenty minutes perhaps as near as I can tell before the last gun fired, I was at Guskys a little before that time there was a sick person there, the sick person I think made no noise of any account that I knew of. - Robert D'Hayis called and Person said I was, the officer arresting Prisoner, his Mother and sister in this case, I took them before Esq Flannery. I took Deft there, the Mother and sister were there before I got there, I kept deft in charge, from the time I took him there till I bot him to sail myself Personally. I saw Deft and sister wash at Flannerys before the Door, I was close as I wanted to be, and paying particular attention to Deft, I think there was no conversation between Deft and his sister, at that time, I do not think it could have taken place without my hearing or seeing it, if it was in a low tone, I did not see Rawboof standing near them before the door



When they washed, if he had been there I would have seen him. Deft washed at Harrings but once & was with me all the time. I did not see Peacock at that time before the door. If he had been there I could have seen him.

G. M. Washburn called said I saw Deft in Jail the night he was committed. Saw a gash inch and a quarter long to the skull, right side of his head as if made with something like a blunt hard weapon, Hammer or Hatchet, or the like. This was the time he was put in Jail. Same night Defts Counsel, S. Jack was with me & Examined the gash at same time.

Samuel Brandon called and sworn, said I was in the Jail three or four days after Deft was put in. he showed his head to me. I saw the wound. It had then commenced scabbing or healing. Skin had been broken, from appearance pretty deep. I think on the right side of his head.

Willis Gurley called and sworn said Deft by his Counsel proposed proving truth made by deed during the day & other times shortly before the death of Parkers made by deed in respect of & against Prisoner - and the Court overruled the evidence, & the Deft by his Counsel excepted, & rested the Cause on the Evidence given. Prosecuting attorney then offered to introduce G. M. Gray, Sheriff of Massac County, as a witness to rebut evidence of Washburn & Brandon in regard to wound on Defts head, when he was put to Jail. The Deft by his Counsel consented that Mr Gray

G. M. Washburn

W. Gurley



might be introduced as a witness for that purpose. Whereupon Mr. Gray was sworn, and said, I saw the wound on H. G. s head, described by Washburn & Brandon a day or two after he came to the Jail. It was about the place they described it to be on the right side of his head. Such a wound as he had of ten seen made by a mans fist. This was all the Evidence in the Case.

At the Instance of the States Attorney the Court gave the Jury the following instructions, viz:

First "The Prosecuting attorney asks the Court  
"to instruct the Jury, that they are the  
"Judges of the law and the fact in this  
"Case and if they believe from the evidence  
"beyond a reasonable doubt that the Defendant  
"did kill Godwin Parker in murder  
"and felon as alleged in the indictment  
"they are bound to find the Defendant  
"guilty of Murder"

Second "If the Jury believe from the evidence  
"in this Case that the defendant voluntarily  
"killed the deceased Godwin Parker in  
"hate fear of personal violence to his person  
"by Parker but not in necessary self de-  
"fence, to preserve his own life, nor to prevent  
"his receiving great bodily harm, they are bound  
"to find the defendant guilty of Manslaughter  
"and fix his punishment by Confinement  
"in the penitentiary of the State for any  
"period not exceeding Eight Years, unless  
"they shall believe that the defendant is  
"guilty of Murder, in which Case they ought



to find him guilty of Murder."

Third

"If the Jury believe from the evidence that that the defendant was pursued by the deceased, Goodwin Parker & turned up on him and slew him with a knife or other instrument capable of producing a like death when it was not necessary for self defence preservation, or in necessary self defence, or to prevent his receiving great bodily harm although they believe there was no previous malice on the part of the defendant towards the deceased, yet they are bound to find the defendant guilty of Manslaughter, and fix his term of Confinement in the penitentiary of the State not more than Eight years."

Fourth

"The Court instructs the Jury that the dying declarations of persons killed as to who did the act are proper and legitimate evidence, and may be considered by the Jury in coming to conclusion as to who done the act."

Fifth

"The Court instructs the Jury that although Parker may have resorted to where Campbell was without authority yet that would not justify the defendant in taking his life unless it was done to preserve his own life or to prevent his receiving great bodily harm."

Sixth

"The Court instructs the Jury that in this case under the indictment they may find the defendant guilty of Murder or manslaughter either, if they believe the evidence swears out, either offence beyond a reasonable doubt."



To the giving of the second and third instructions by the Court as asked by the prosecution, the Deft by his Counsel excepted.

The Defendants Counsel then moved the Court to instruct the Jury as follows

First

Of the Jury believe Parker and others with him went to Campbell's house in a riotous and tumultuous manner, such as to be likely to create alarm & if defendant fled to avoid suffering or inflicting violence & was overtaken with the strong arm of the law in such flight in such manner as to raise imminent danger of defendant's immediate destruction then and in that case Deft had a full ~~xxxv~~ legal right even to slay his pursuer in order to protect his own life "which the Court refused to give in the form as asked, but gave in lieu of the said instruction, the following instruction viz: "If the Jury believe from the evidence that Parker and others with him went to the house where Campbell resided & was at the time, in a tumultuous manner, and the defendant through fear of personal violence, fled from the house and was pursued by Parker, overtaken and attacked, and the Defendant there inflicted the wound on his necessary self defence, in order to save his own life, or to prevent his receiving great bodily harm the Verdict ought to be not guilty."

To the refusal of the Court, to give the said first instruction in form as asked by Counsel, the said defendant excepted



The Defendants Counsel also moved the Court to instruct the Jury as follows. viz

Second.

"The home and fireside of every burman being in this State is held with his person to be sacred & the law protects the person and home fully from invasion and if dead and others with him on the night of Mr Parkers decease went to the house of depts Father where Dept resided in a violent riotous and tumultuous manner it lies on the prosecution to make proof of such facts to the satisfaction of the Jury as would amount to a warrant so to do & if you believe that the evidence fails to show such facts as in law would authorize the conduct of dead and those with him at Campbells house then depts right of self defence would be clear" which instruction in form as asked the Court refused to give, but gave to the Jury in lieu thereof the following instruction viz

"If the Jury believe from the evidence that Parker and others on the night of Mr Parkers death went to the house of defendants Father where the defendant resided, in a violent riotous and tumultuous manner for the purpose of arresting the defendant then it would lie on the Prosecution to make proof of such facts to the satisfaction of the Jury as would amount to legal authority to arrest the defendant & if you believe the evidence fails to show such authority then in law Parker would not be justified in arresting the defendant



if he did arrest him".

The defendants Counsel excepted to the opinion of the Court in refusing to give the said second instruction aforesaid in form as asked by Counsel.

The Defendants Counsel also asked the Court to instruct the Jury as follows by

Third

If dect went to Campbells house in the opinion of the Jury from the whole of the facts and Circumstances proved then it would lie on dect to proceed in a proper and legal way & if the Jury shall be of opinion from the evidence that Parker with others went to dects House in a riotous & tumultuous manner without giving dect any proper knowledge of his intention to arrest, then the dect would have the same right of self defence which the law guaranties to every one" which instruction the Court refused, and the dect by his Counsel Excepted.

The Court at the Instance of dects Counsel gave to the Jury the following instruction by

Fourth

"The Court instructs the Jury in point of Law that the first question for them in this Cause is to ascertain whether Deft inflicted the wound on Parker of which he died, or aided abetted or assisted in inflicting the same, and if the evidence should fail to satisfy the Jury of this fact, beyond a reasonable doubt, then the Deft ought to be not guilty"

The Jury ought not to presume that the dect or others with him had any right



to make any arrest of Deft before the decease of Parker, the deed in the absence of proof, and unless there is proof to satisfy the Jury that Deft had been guilty of committing a felony before that time or that he had acted under lawful warrant, the Jury should be actuated by the presumption of Deft's being Deft's innocence in regard to the Commission of such felony"

Sixth. "When the party is in the act of flight to avoid suffering violence, the law does not require him to flee to any actual tangible wall before he may kill his pursuer in necessary self defence, but the wall, in a legal sense is at the point where he is overtaken and caught, or by any means whatever overpowered so that he is not able to flee any farther, this the principle of the law & it is the province of the Jury to apply the evidence, the fact and circumstances, as proved, to the law"

Seventh. "In Criminal Cases like this the Jury can not weigh the evidence, but it must be so conclusive without weighing it as to convince the Jury of the guilt of Deft beyond a reasonable doubt before a verdict of guilty ought to be given"

Eighth. "It is a rule of law that affirmative testimony outweighs negative testimony but when a witness states his chances, & opportunities of knowing whether the fact in question took place or not and his chances & opportunities are equal to the witness swearing in the affirmative and if he states that he did not see or hear & would have seen & heard if the fact in question had happened it then assumes the character of affirmative evidence &



Stands about on the same grounds in law but the weight & force of such evidence together with the credit to be given to the witnesses are matters peculiarly to be determined by the Jury.

Ninth

"If the Jury are satisfied from the evidence that that deft inflicted the wound on the dead of which he died, yet if from the evidence the Jury believe that deft inflicted the wound in necessary self defence the verdict should be not guilty"

Tenth

"When the words of a deft are offered in evidence against him by his adversary in cases of this nature if casually made & when the attention of the party is not directed to the matter such words should be received by the Jury with great Caution"

Eleventh

The defts Counsel asked the Court to give the ~~Exxy~~ following instruction to the Jury

"If it is uncertain from the evidence in the minds of the Jury which one out of two or more persons inflicted the stab that would operate to acquit the prisoner unless there is proof that the prisoner aided or abetted the person ascertained to have killed him" which the Court refused to give and the deft by his counsel accepted

The Court also instructed the Jury,

Twelfth

That although the dying declarations of the deceased are admissible in evidence yet the Jury are to judge from the language used and the circumstances shown to surround the killing, whether in any declaration he may have made in relation



to the Cause of his death he meant the deft and knew him to be the Author of the mortal Wound given and Which Caused his death"

The deft Counsel asked the Court to give to the Jury the following instruction by This tenth "It is the duty of the Jury to Consider the prisoners case as if he were a white man. for the Law is the same there being no distinction in its principles in respect of Color" Which the Court refused & the deft by his Counsel excepted.

Whereupon after argument of the Cause on the part of the prosecution as well as on the part of the defence, the Jury retired to Consider of their Verdict and afterwards returned the following Verdict into Court; "We the Jury find the defendant guilty of Murder in the first degree and again that he serve at least of Eight years in the penitentiary of the State"

Which by the Consent of the Jury and of the Counsel for the respective parties was put into due form by the Court. There upon the deft by his Counsel J. Jack moved the Court to set aside the Verdict of the Jury & grant a new trial, and in arrest of Judgment, on the ground of Challenge to the array then made, the grounds of which motions were reduced to Writing & filed, and in support of the motion in arrest of Judgment on the ground of Challenge to the array of the panel of the petit Jury the following affidavit was made and filed



"People of Illinois } Indictment for murder  
 " } trial at the June Term of  
 Deater Campbell } the Circuit Court of Massac  
 County Ills. 1854. Verdict  
 guilty of Manslaughter & imprisonment in the  
 penitentiary 8 years

State of Illinois }  
 Massac County }

On the 18<sup>th</sup> day of June 1854  
 J. Jack atty of Hft. in the above Cause of  
 the people v Deater Campbell: on oath saith  
 that appended hereto is a list of the petit  
 Jurors for the second week of the present  
 Term of Court as furnished this affair by  
 the prosecuting atty. John Logan Esqr.  
 that the said list is marked on the back  
 thereof "N. Campbell" by this affiant in  
 his own hand writing. Affiant states  
 that Ulmann Roby one of the Jurors on  
 said list, and one of the Jurors called  
 but not elected in said trial was  
 as affiant believes one of the Grand  
 Jurors serving at the time the Bill  
 was found against said defendant  
 affiant believes there is one other name  
 of the men on said list who also served  
 on the Grand Jury when sd Bill of  
 Indictment found but of this last  
 he is not certain not having as yet  
 had access to the said lists so as to make  
 certain examination. Affiant saith  
 that deft. had not such in different  
 parcel out of which to select a Jury  
 to try his Cause as he was entitled to by



by law as affiant believes & further  
saith not  
Sworn to & subscribed  
before me the day and  
year aforesaid

J. Park atty  
pro deft.

James Colliatt Clk.

"June Term 1854"

- "List of Petit Jurors" Abel Taylor 2<sup>nd</sup>  
 Lewis Stalcup 3<sup>rd</sup> Joseph Crocker, 4 Williamson  
 Brown, 5 Robert Stewart, 6 J. M. Hays 7  
 7 Reuben Wilson, 8 J. Brewster M. Brammer  
 9 Job Davis 10 Marion Madden 11<sup>th</sup> James  
 Merris 12 J. H. Mizell 13 Eli Garrett 14<sup>th</sup> William  
 H. League 15<sup>th</sup> Silvanus Noy 16 Robert Leek  
 17<sup>th</sup> John N. Field 18<sup>th</sup> Alfred Copland 19<sup>th</sup>  
 J. J. Cuthenden 20<sup>th</sup> S. N. Spurrer 21<sup>st</sup>  
 H. Puffer 22 Francis Withers 23 John Ashby 24

Endorsed on the back thereof by depts  
atty "D. Campbell"

Whereupon after argument  
of Counsel respectively as well on behalf  
of the people as of the deft the Court  
overruled the said Motion for new trial  
and in arrest of Judgment & proceeded  
to pass sentence of the Law upon the  
said prisoner & thereupon passed sentence  
thereby carrying said Verdict of Conviction  
as aforesaid into effect, and the deft. ex-  
cepted, and the deft by his Counsel J. Park  
tendered this Bill of exceptions, and prayed  
that it might be signed sealed & made  
a part of the Record in the Cause according  
to the act of Assembly in such case made and  
provided, and accordingly it is done

William K. Parish Clk



State of Illinois  
Massac County } Set

I James Elliott Clerk  
of the Circuit Court in and for Massac  
County and State of Illinois do hereby certify  
that the twenty-five foregoing pages  
contain a full and complete Transcript  
of the Record and proceedings of the Cause  
therein mentioned, as fully and completely  
as the same appears of Record in my Office  
In witness of which I hereunto set  
my hand and the Seal of  
said Court, done at Office  
in Metropolis City Illinois this  
7th day of November AD 1854  
James Elliott Clerk of the  
Massac Circuit Court





no 35

D. Campbell

by

The People

Emmet Malone

Printed 15th Nov. 1854

J. D. Proctor CM

By A. Schmitz & Co

Price paid \$5.75

Argument of Error by

- The Pleas in error assign for Error
- 1<sup>st</sup> The Court erred in giving improper instructions to the jury at the instance of the People
- 2<sup>d</sup> The Court erred in refusing ~~to~~ give instructions asked for by Defts atty.
- 3<sup>d</sup> The Court erred in overruling proper evidence offered by Prisoner in His defence
- 4<sup>th</sup> The Court erred in not exercising a sound judicial discretion in overruling the plea for new trial
- 5<sup>th</sup> General errors *Went for Plea in Error -*

[8748-13]

Printed in error by J. A. Logan for people



The People of the State vs  
Deccatur Campbell  
a Man of color

Indictment for Murder  
Tried at the June T.  
Court of  
Maple County 1854

Abstract &

Indictment charging Deft with the Murder of  
one Goodwin Parker in the usual form  
To which Deft after being arraigned  
pleaded not guilty & put himself upon  
the Country for trial, Deft applied to  
the Court for appointment of Counsel to  
conduct his defence whereupon the Court  
at the request of Deft appointed J. Jack  
an Attorney of the Court to defend the  
Prisoner, A jury was called elected  
and sworn to well & truly try the issue  
joined &

Whereupon the Prosecution called  
Joseph Dupree as a witness who was sworn  
& stated I was present when Deed came to  
his death Deed G. Parker, myself James H  
Parker & William Warren started from the  
house of one Gusty a German and went  
on towards Campbells house Father of  
Deft with whom Deft lived Deed said when  
he started he wanted have Deft if on top  
side of castle & fetch him to justice Deed  
asked me & Warren if we would go & help  
We all stopt 25 or 30 or 40 yards before we got  
to C<sup>s</sup> house when we stopt G. P. the Deed went  
on to C<sup>s</sup> door, & was to fetch a hollow if Deft  
in this case was there when he got to the door  
he hollowed, & we went up when we got up  
Deed & Deft were on the other side of the  
house as far as it was from where we started



when I run down the hill past the house to where  
Deed & Sept was, 2 women & a boy were standing  
beside them Deed got up from P. about 1/2  
cent, We aimed to cut to him if we could  
& I run on after him & was getting over  
the fence to my left, when P. hollowed out He  
has killed me, Sept got up from the bunch  
I cant tell how they lay When I got to Deed  
after this Mr. Warren was trying to lift him  
up I & Goodwin are you hurt? He said nothing  
Mr. & Me carried him a piece & he said  
lay me down we laid him down & I  
heard him speak no more There was a wound  
in his left side near the heart, 3/4 inch wide  
dont know how deep it look<sup>d</sup> as if made  
with small knife This was in Dec. 1853 I  
saw no one engaged with Deed, but Sept,  
+ On C. G. he said. It was in the night  
we went to Campbells house 1/2 or 2 hours,  
3 others beside me went with Deed.  
Deed took a Hatchet with him Well there  
was a gun in the crowd, I had a knife  
I had carried several years had one blade  
& A Bark handle Blade 3 inches long  
I suppose narrow blade, I think I did  
not hear any one say at the time he had  
killed a Dead Nigger We were all ex-  
cited before we started to Campbells  
house & had been drinking some  
There was a gun fired before we went  
to Campbells I fired by accident Gully,  
is 150 or 200 yards from C.'s I think  
at the place where Deed was killed & a  
gun fired also I & Parker fired it It was  
not pointed to Sept when it fired



Deft had got up & over the fence  
running down the Hill through the bushes  
out side the fence I was running after him &  
think I was falling over the fence when  
gun fired 10th P. When gun fired was inside  
the field where Deft lay when gun fired the  
gun behind me I looked round when he  
fired so quick that he had not time to move  
the gun

Pros. resumed examination, I saw the Halsted  
next morning Deft took with him lying on  
the ground. My knife was not out of my  
pocket that night,

James H. Parker was then called & said  
I was there the night in question we started  
after the Niggers & asked Dupre & Warren  
if they would go up with us When I run  
up to where it happened the women were  
running down the Hill on the other side of  
Campbells house The 3 were on Deft Deft  
his Mother & Sister Deft Broke over the fence  
Dupre & W. came & took up Deft, was  
struck on left side He said "He has killed me"  
was in the night M Co Dupre was along

+ On C. E. said we went then along a path in  
the field from Gustys to C-s We all stoppt  
May be 60 yards from C house No noise  
except talking among ourselves As you go  
to C. from G. the fence on the left & path in  
the field come still closer together & before  
getting to Campbells house they meet, there  
we stoppt. Deft. went on to C-s door & we  
stood there Feather was to hollow if Deft  
was there, He hollowed & said Here he is  
boys - I could not see to where he stood  
but nothing to prevent but darkness







Dr McKeon was called

and said the wound described was the cause of Parker's death  
Prosecution rested here,  
Adjutant

Then called S. Gaudall who I live 1/4 a  
mile from where he lived I heard  
the noise at the time to my house was 2  
hours after night. 1st thing I heard was a  
gun fire in that direction in a short time  
I heard some one call these words "Come  
on boys come on boys the D - a nigger has  
ship" Directly I heard the same words again  
then I heard another gun & some conver-  
sation.

Robert Harris was called & I? he was with  
Depts right by him next day & that Depts  
did not say that was a center hit  
I gave him last night

G W Washburn was then called & said I  
saw Depts the night he was committed.  
Depts atty was with me & saw a wound  
in Depts head right side 1 1/2 inch long  
& cut to the skull <sup>with</sup> Hammer hatchet  
axe or blunt end of some such thing

S. Brandon called said I saw the wound  
described by No 3 or 4 days after Depts  
came to jail

Willis Gurley was then called Depts offered  
to prove by his witness that a few hours  
before & on same day of the occurrence  
of P. death He heard Depts. & others who  
went with him make threats on the life  
of Depts. Pros. objected; Court overruled the



and Deft excepted, & rested the cause  
Prosecution called Geo Gray to rebut ev.  
of W & B in relation to wound on  
Defts head, & Mesonier by his counsel  
consented to the examination of Wt.  
who said he saw a wound on Defts  
head as described by W & B. such as  
he had seen made with a Mans fist

The Court then at the instance of Pros Atty.  
gave several instructions to the jury as  
appear in the record to the giving of  
some of which the Deft excepted  
The Court also gave instructions at  
the instance of Deft and refused  
some asked for by him as appear  
in the record to the refusing of which  
Deft excepted After argument  
of the cause to the jury they retired  
and returned a verdict Guilty  
of Manslaughter & fix the time of  
Defts imprisonment at eight  
years in the Penitentiary  
Whereupon Deft moved for a new  
trial & in arrest of judgment For new  
trial because the verdict is agt,  
the law & evidence and in arrest  
of judgment on the ground of challenge  
to the array of the Panel of jury,  
& the Court overruled the motion  
& Deft Inquired Bill of exceptions  
and  
J. J. for  
Deft



No 35

L Campbell  
vs  
The People

Abstract of  
the cause



The People

Openly by Caton J.

The Plaintiff in Error who is a negro was indicted for the murder of Benjamin Parker - The evidence in the case tends very strongly to show that the deceased made an assault upon the prisoner ~~with a hatchet~~ and that the homicide was committed in necessary self defence. It appears that the deceased and three others went to seek the prisoner at his father's house - ~~the~~ the night time, the deceased ~~had a hatchet in his hand~~ and went to the door of the house leaving his companions thirty or forty yards back to whom he ~~was~~ <sup>was</sup> to give warning if ~~he~~ <sup>Campbell</sup> was in the house. Shortly after the deceased went to the door he called to the others to come on and ~~advised~~ informed them that the negro was there. They rushed up when the deceased and the prisoner were seen some distance from the house engaged together and ~~they~~ <sup>they</sup> ~~scuffled~~ <sup>scuffled</sup>. The deceased was struck & died in a few minutes. When the deceased went to the house he had a hatchet in his hands, which was found near the spot where he was killed and <sup>after</sup> the negro <sup>was committed to jail</sup> had a wound ~~upon~~ <sup>upon</sup> his head, which penetrated to the skull, which <sup>appeared to have</sup> ~~been~~ <sup>been</sup> made with a hatchet <sup>an axe or a hammer</sup>. There was no pretence that there was any sort of justification or legal cause for arresting or assaulting the prisoner. Upon the trial the defence offered <sup>to prove</sup> that on that day and at other times shortly before his death the deceased had made threats against the prisoner. This evidence the court ruled out and an exception was taken. In this the court unquestionably erred <sup>although they may</sup> ~~even admit~~ that these threats <sup>have</sup> ~~come~~ <sup>come</sup> to the knowledge of the defendant till after the homicide was committed. If the deceased had made threats against the defendant, it would be a reasonable inference that he sought him for the purpose of executing those threats, and thus they would serve to <sup>characterize</sup> ~~serve to~~



his conduct towards the prisoner at the time  
of this meeting and of the affray. If he had threatened  
to kill, maim or <sup>dangerously</sup> beat the defendants, it would  
be a fair inference, especially so long as the  
evidence shows that he had a hatchet in his hands  
that he had attempted to ~~do so~~, <sup>accomplish his declared purpose</sup> and if so then the  
prisoner was justified in defending himself even  
to the taking of the life of his assailant if necessary.  
While the threats of themselves could not have  
justified the prisoner in assaulting and killing the  
deceased, they might have been of the utmost  
importance in connection with the other testimony,  
in making out a case of necessary self defence.  
The evidence offered was proper & should have been  
admitted.

The second instruction given for the prosecution  
and which was excepted to was as follows; "If  
the jury believe from the evidence that the defendant  
was pursued by the deceased, Goodwin Parker,  
and turned upon him & slew him with a knife  
or other instrument capable of producing a like  
death when it was not necessary for self  
preservation or in necessary self defence or  
to prevent his receiving great bodily harm  
although they believe there was no previous  
malice on the part of the defendant towards  
the deceased yet they are bound to find the  
defendant guilty of manslaughter and fix  
his term of confinement in the penitentiary  
of the state not more than eight years." This instruc-  
tion is not absolutely wrong was at least liable  
to misconstruction and to be understood by  
the jury, as depriving the defendant of the right  
of self defence unless his danger was not only apparent  
imminent but was real and positive. If so understood  
the instruction was wrong. If the defendant  
was pursued or assaulted by the deceased in such  
a way as to induce in him a reasonable, <sup>and</sup> well



grounded belief that he was actually in danger  
of losing his life or of suffering great bodily  
harm, when acting under the influence of such reason-  
-able apprehension he was ~~assumed~~ justified in defending  
himself ~~whether~~ whether the danger were real or only apparent.  
Actual and positive danger is not indispensable  
to justify self defence. If one is assaulted with a sword  
in such a way as to indicate an intent to take his life  
and with an apparent ability to accomplish such  
intent, he is not bound to stop and inquire whether  
the sword is but a tooth, or whether the assault is but  
a jest, before he repels it with the necessary force to  
protect himself against the threatened harm. If  
one is assaulted with a pistol in such a way as to  
manifestly show a design to slay him, he may be  
justified in <sup>killing</sup> ~~slaying~~ his assailant although it  
should turn out that the pistol was not loaded,  
and the only design was to frighten him. Men when  
threatened with danger are obliged to judge from  
appearances and determine upon the actual state of things  
from the circumstances surrounding them, at least  
as much as if placed in other & less expecting positions  
and it would be monstrous to say, that if they act from  
real & honest convictions induced by reasonable evi-  
dence, they shall be held responsible criminally for a  
mistake in the ~~actual~~ extent of <sup>actual</sup> danger where a more  
reasonable and judicious man would have been  
alike mistaken. A contrary rule would make the  
law of self defence a snare & a delusion. It would  
<sup>become</sup> ~~be~~ but a mockery of the sacred right of self preservation.

The eleventh instruction asked by the prisoner  
should have been given. It is this; "If it is uncertain  
from the evidence in the minds of the jury, which one  
out of two or more persons inflicted the stab that would  
operate to acquit the prisoner unless there is proof  
that the prisoner aided or abetted the person  
ascertained to have killed him." While this



instruction is unartificially drawn & is liable to verbal criticism, yet it contains an important principle of law ~~of~~ the benefit of which the prisoner should not have been deprived. There was evidence tending to show that the mother & sister of the prisoner were at or very near the place of the affray at the time the wound was inflicted. And his counsel had the right to insist before the jury that one of them struck the blow without his knowledge or procurement while he was simply trying to flee from his pursuer and had the jury so far concurred in that view of the case as to entertain a reasonable doubt <sup>whether he or</sup> that one of the others did not strike the blow without the procurement of the prisoner he was entitled to an acquittal. ~~If one of two or more persons~~ Although it may be <sup>positively</sup> proved that one of two or more persons committed a crime, yet if it is uncertain which ~~did~~ is the guilty party, all must be acquitted. No one can be convicted till it is established that he is the party who committed the offence.

The thirteenth instruction asked for the prisoner was this; "It is the duty of the jury to consider the prisoners case as if he were a white man, for the law is the same, there being no distinction in its principles in respect of color" This too was refused by the Court and an exception taken. It was not pretended on the argument that the law of this case by which the prisoners guilt or innocence was to be established ~~under~~ was not precisely the same as if he were a white man, and it was even insisted upon the argument that this proposition is so plain and so universally understood and recognized that it would have been an insult to the understanding of the jury for the Court to have instructed them on that point. The proposition is undeniably exceedingly plain and altogether undeniable, and I trust is universally understood and recognized, but it was still the right of the prisoner to have the law, plain as it was, <sup>declared to</sup> laid before the jury ~~with~~



~~By the sanction of the Court,~~ But again it was objected that  
the instruction asserts the absolute equality in all respects  
under our law of the black man with the white. Even if the  
wording of the instruction were thus broad, it could only  
be understood as applying to the case upon trial where  
the equality is admitted. With the rights of the defendant  
in any other regard the jury could have nothing to do.  
The only object of the instruction could have been to  
enlighten them as to the law of that case, and whether  
their belief of the relative rights of the defendant in  
other respects were right or wrong was a matter of  
no sort of moment to any party. But by reference to  
the forepart of the instruction it will be seen that  
it was especially asked in reference to the case on trial  
for they are asked to be directed to consider the prisoner's  
case as if he were a white man, for the reason that  
our law makes no distinction in respect of color  
which of course can only be understood as in respect  
to such a case. Any other construction of that in-  
struction is altogether too refined for practical  
justice. The instruction should have been given.  
The judgment must be reversed & the case  
remanded.



Campbell

the people

Opinion by  
Caton

Edwin

copied.







not know that he ever saw the order entered  
on the Minutes, nor has he any recollection  
of ever looking for it, But his recollection  
is that James Elliott Esq informed him  
affiant that the order was so entered  
and also that the Judge Hon W E Parish  
spoke of having so entered the order  
on the Minutes of the Court at the  
time this affiant presented said Bill of  
exceptions to the Judge for his signature  
before the meeting of the Court at  
the next ~~and~~ <sup>next</sup> term after I had  
<sup>in Metropolis before the next term of the Court was opened</sup>  
The bill was presented then to the Judge  
with an entry at the bottom of it by  
John G. Davis, Esq. in his hand writing  
stating <sup>in substance</sup> that the Bill had been examined  
by him & that it contained a fair  
statement of the evidence, said Davis  
having been of Counsel for the Prosecution  
together with the Prosecuting atty. on  
the trial of said Cause in which  
~~he~~ ~~to~~ ~~subscribed~~  
~~before me this day~~  
~~year past above written~~

Wm. J. Davis

The affiant's recollection is that John A. Logan Esq  
Prosecuting atty. at the time of adjournment &  
at the time this affiant was urging the Court  
to settle & sign the Bill of exceptions then  
asked in Court that he was willing for  
the Bill to be settled in vacation and  
any Bill which should receive the appro-  
bation of said Davis who was then in  
Metropolis as being correct would  
not be objected to by him; to which  
this affiant when he could not obtain



a settlement of the Bill at that time assented,  
& it was in view of this parcel understanding  
before the Court in open Court as offici-  
ant understood it, that He had Mr Davis  
to examine the original Bill of exceptions  
& number each Page of it in figures in his  
own hand; & express his approbation of  
its correctness in writing at the end  
of the Bill.

Seen to & subscribed  
before me the day & year  
aforesaid

J. Smith  
" "

Himney D Preston Clerk  
By N Johnston D.C.  
" "



D. Campbell

27

The People

Prop affidavit to  
resist demurrals  
of Bill of excep  
tions

11



Supreme Court of the State of Illinois.

1<sup>st</sup> Grand Division

November Term AD 1834

H. Campbell

vs  $\frac{3}{3}$  Error to Massac.  
The People

Ans A Juror being first duly sworn according to law, deposes and says that he is the State Attorney of the 3<sup>rd</sup> Judicial Circuit, and was such at the time the above cause was tried in the Massac Circuit Court, at the last June Term thereof, that at the Term of Court which said cause was tried, no Bill of Exceptions in said cause, was presented to the Judge of said Court for signature, either by the Defendant himself or any of his Counsel. As affiant is informed and verily believes, such Bill of Exceptions was not presented to the Judge for signature thereof until the next October Term following of said Court. That affiant has frequently heard the Judge of said Court say, that no Bill of exceptions in the above cause was presented by Defendant or his Counsel at the June Term of said Massac Circuit Court for approval and signature, and that such Bill of Exceptions was not presented to him until the October Term following -

Subscribed & sworn to this

17<sup>th</sup> Novem AD 1834

$\frac{3}{3}$  John A. Loper

Hirney D. Weston Clk

By A. Johnston D.C.



D. Campbell

vs 3

The People

Affidavit to dismiss

Evans vs Fisher 5 Sil 483.

Buckmaster vs B 4 " 443.

Neckit vs Dmell 11<sup>th</sup> Ill. 72



No 35

November 1854.

Deatur Campbell

J.

The People.

Error to Massac.

Opinion by

Caton. J.

8748

Judgment reversed and

Case remanded.