

8598

No. _____

Supreme Court of Illinois

Dempsey Abels et al

vs.

People

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION,

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

Andrew J. Bromley indicted with
DEMPSEY ABELS, SMITH SULLIVAN ~~and~~

~~Andrew J. Bromley,~~

vs.

LARCENY.

THE PEOPLE OF THE STATE OF ILLINOIS.

Deft in error
Error to Marion

ABSTRACT OF PLAINTIFF'S CASE.

1] At the July Special Term of Marion Circuit Court, A. D. 1861,
2] the plaintiff, Andrew J. Bromley, was indicted with Dempsey Abels and Smith Sullivan for Larceny, in stealing one shoulder of bacon of the value of two dollars, one ham of bacon of the value of two dollars and fifty cents, eight sides of bacon of the value of three dollars each, the property of John Wood. The Indictment was in proper form, and the plaintiff was tried separately before Hon. Silas M. Bryan, Presiding Judge of said Court and a jury. Before proceeding to trial a motion was made by plaintiff for 10] a continuance, on affidavit filed, [Here insert affidavit in *hæc verba*] but the motion was overruled, to which ruling of the Court the defendant at 13] the time excepted.

The prosecution on the trial proved by one Harrison Butler that he had a search warrant put into his hands some time in June last, to search the prisoner's house. The warrant was to search for some meat, and it was on 21st of May last the search was made. I found 20 pounds of bacon meat in defendant's stack, in a box covered with some oats. It was a middling. Defendant was not at home. His wife appeared willing to have the house searched. I saw nothing about the house of the stolen meat. I found some meat at Able's, and some at Bromley's, wrapped up in cloth, in a box, covered with oats. There was a ham and shoulder at Able's. The defendant objected before the witness answered to the evidence of meat being at Able's, but the Court overruled the objection, and the witness was permitted to answer as above, and defendant all the time excepted to the ruling of the Court. To questions asked by defendant's counsel, witness answered, defendant's 14] character is not very good; I have heard a good deal said about his being concerned in counterfeiting, but know nothing myself—it is only rumor. I am an officer. James Harper on behalf of the prosecution, being sworn, stated that he heard the defendant say that one Ables, Bennett and Sullivan had taken his horses to carry Woods' meat in without his consent, and

that he knew nothing about the transaction, and that they had the meat in his stable without his knowledge or consent, and that he had no hand in it. Woods, another witness for the prosecution, stated that there was stolen from his smoke house four hundred pounds of bacon worth twelve and a half cents per pound, in Marion county, last June, and he tracked the horses to Bromley's stable, the next morning, where twenty pounds of meat was found in a box covered with oats. He never heard any thing against Bromley's character, and knows nothing much about him. His house is four miles from Bromley's. On behalf of defendant, N. Patterson was called as a witness; stated that he had known Bromley one or two years, and never knew anything against his character, ~~he~~ he was a hard-working man. This was all of the evidence adduced in the cause on the part of the people, as well as on the part of the defendant.

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The Court then gave the following instructions to the jury on the part of the ~~defendant~~ *prosecution*

1st. If the jury believe from the evidence that the defendant is not guilty, the form of the verdict will be, "We the jury, find the defendant not guilty."

2d. If the jury believe from the evidence that the defendant is guilty, the form of the verdict will be, We the jury, find the defendant guilty in manner and form as charged in the indictment, and find the value of the property stolen to be ~~any~~ dollars, and fix the term of his confinement in the penitentiary at not less than one year nor more than ten.

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3d. That if the Jury believe that the bacon of Woods was stolen, and that the defendant knew when the larceny was committed, and was consulted by others who committed the larceny, and he advised and encouraged the larceny before it was committed, or at the time it was committed, the jury should find him guilty, although the jury may believe that others carried away and used the bacon.

4th. That in order to find the defendant guilty in this case of larceny, it was not necessary for the prosecution to prove that the defendant received five dollars' worth of the bacon, or any part of it, provided the jury believe from the evidence that Bromley took a part in the larceny, or was accessory thereto.

The defendant excepted at the time to the instructions given for the prosecution, to each and every one of their instructions as given by the Court to the jury.

The jury found the defendant guilty, and sentenced him to an imprisonment in the penitentiary for one year; whereupon the defendant moved for an arrest of judgment and for a new trial, for several reasons; but the ground relied upon for a new trial was that the verdict is contrary to the law and evidence, and that the instructions of the Court were erroneous.

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The Court overruled the motions in arrest of a new trial, and rendered Judgment upon the verdict of the jury; to which Judgment and rulings of the Court the defendant at the time excepted, and brings the cause into this Court by writ of error, and assigns for error,

- 1st. That the Court below erred in refusing to continue the cause.
- 2d. That the instructions of the Court to the Jury were erroneous; and
- 3d. That the Court erred in overruling the motion for a new trial, and rendering judgment on the verdict of the jury.

R. S. NELSON, for Plaintiff in Error.

Points and Authorities Relied upon by the Plaintiff in Error.

- 1st. The Court erred in refusing to continue the cause on affidavit.
- 2d. The Court erred in giving the second instruction to the jury.
- 3d. The Court erred in giving the the third instruction to the jury.
- 4th. The Court erred in giving the fourth and last instruction to the jury.
- 5th. The Court erred in refusing to arrest judgment.
- 6th. The Court erred in refusing a new trial, and rendering judgment on verdict of the jury.

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Bromley
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abstract

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Filed Nov. 14-1861.
A. Johnston Clerk

on record of the jury.

- 1st. The Court erred in refusing a new trial and rendering judgment.
- 2d. The Court erred in refusing to arrest judgment.
- 3d. The Court erred in giving the former and not the instruction to the jury.
- 4d. The Court erred in giving the third instruction to the jury.
- 5d. The Court erred in giving the second instruction to the jury.
- 6th. The Court erred in refusing to continue the case on another day.

Books and Manuscripts Belonging to the Library in Error.

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- 6th. The Court erred in refusing a new trial, and rendering judgment on verdict of the jury.

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Verdict of the jury.

8th. The Court erred in refusing a new trial and rendering judgment

9th. The Court erred in refusing to arrest judgment.

10th. The Court erred in giving the fourth and last instruction to the jury.

11th. The Court erred in giving the third instruction to the jury.

12th. The Court erred in giving the second instruction to the jury.

13th. The Court erred in refusing to consider the cause as argued.

Points and authorities relied upon by the Plaintiff in Error.

Filed Nov-14-1864
A. Johnston, Clerk

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A. J. Crowley

Mr

The People

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