No. 14420

# Supreme Court of Illinois

Clark

vs.

People

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

14420

No. 5.

PEOPLE'S CAUSES.

Clark
vs
People
14420

1st

State of Illinois }
County of Cook } ss.
City of Chicago }

Pleas before the Honorable Robert S. Wilson, Recorder of the City of Chicago, and Presiding Judge of the Recorders Court of the said City, at a term thereof, began and held at the Court House in the City of Chicago, in the County and State aforesaid, on the first Monday of, it being the sixth day of October in the year of our Lord One Thousand Eight Hundred and Sixty Two, and of the Independence of the United States the Eighty Seventh.

Present: Hon. Robert S. Wilson, Recorder
of the City of Chicago
Joseph Knox States Attorney
& Co Hesing Sheriff of Cook County

Attest: Joseph K. C. Forrest Clerk of said Court.

Be it remembered, to wit, on the sixth day of October in the year last aforesaid, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, aforesaid, which proceedings are in the words and figures following, to wit:

The Sheriff returned into Court the Venire Facias, formerly issued, by which it appears to the Court, that the

following named persons have been duly summoned to appear this day and serve as Grand Jurors at this term of Court to wit:

Henry Fuller James. McCarthy, F. O. Slater, Philip Steinmuller, Isaac Spur, George M. Wright, Patrick Malay, O. G. Troop, O. J. Hayward, Charles H. Barnes, E. Hanson, L. Baer, John Kean, M. Donnatus, Joseph Miller, Louis Kennard, Joseph Walz, Jacob Harris, Wm. Ellis, John Powers, E. Healing, D. O. Gage and James. R. Finch, who upon being called answered to their respective names and gave their personal attendance at this Term of Court as a Grand Jury in and for the body of the City of Chicago, and Henry Fuller one of the said Grand Jurors having been appointed Foreman of said Grand Jury, they were duly sworn in and charged by the Court, and thereupon retire to consider upon their presentments.

And afterwards to wit, on the Eighth day of October in the year last aforesaid, it being the term of Court aforesaid, the following among other proceedings were had and entered

of Record in said Court, which said proceedings are in the words and figures following to wit

3d

The Grand Jury came into open Court and made among others the following presentment, indorsed "A True Bill", which said True Bill is in the words and figures following to wit:

" State of Illinois }
City of Chicago } SS
Cook County }

At the October term of the Recorders Court of the City of Chicago, in said State and County in the year of our Lord One Thousand Eight Hundred and Sixty Two

The Grand Jurors chosen, selected and sworn, in and for the City of Chicago, in the County of Cook and State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths, present that

#
4th

William Clark on the first day of October in the year of our Lord one thousand eight hundred and sixty two, in said City of Chicago, in the County and State aforesaid, one bay mare of the value of one hundred dollars, one bay mare of the value of one hundred dollars the personal goods and property of Archibald Scott, then and there being found, did then and there feloniously steal take and carry away, contrary to the statute and against the peace and dignity of the same People of the State of Illinois.

Joseph Knox
States Attorney

which said True Bill, has the following indorsements to wit:

"P.A. No 3470.
Recorders Court of the City of Chicago
October Term, 1862
The People of the State of Illinois
vs
William Clark
Indictment for
Larceny

A True Bill.

Henry Fuller

Foreman of the Grand Jury

Witnesses.

Archibald Scott, Elizabeth Scott, John M. Burns, Officer Dixon, Dennis Buchanan, Mary Buchanan.

Filed the Eighth day of October A. D. 1862.

Joseph H. Forrest

Clerk

A

5th

And thereupon to wit on the same day and year last aforesaid, it being the term of Court aforesaid, the following among other proceedings were had and entered of Record in said Court which proceedings are in the words and figures as follows to wit:

3470 The People of the State of Illinois vs. William Clark } ss. Indictment for Larceny.

B
6th

This day comes the said People by Joseph Knox States Attorney and the said defendant as well in his own proper person as by his Counsel L. McFelker Esq also comes and the said defendant having been furnished with a Copy of his Indictment and a list of Jurors and Witnesses and being now here duly arraigned for — Plea now says, that he is Not Guilty in manner and form as charged in the Indictment, whereupon the Court orders, that the said Plea be accepted and entered of Record and the said defendant to be remanded

And afterwards to wit on the Tenth day of October in the year last aforesaid it being the term of Court aforesaid the said defendant by his Counsel filed in said Court his certain affidavit for continuance, which said affidavit is in the words and figures following to wit,

4

State of Illinois }
Cook County } ss

Recorders Court of the
City of Chicago
October Term A.D. 1862.

B
7th

The People of Illinois
vs
William Clark }

William Clark being duly sworn deposes and says, that he is the defendant in the above entitled cause now pending in said Court. That the Indictment was found at the present Term of said Court and filed in said Court on the eighth day of this month October A.D. 1862, this affiant says, that he has five witnesses who are material witnesses on his behalf in said cause – that their names are as follows Daniel Dodd, Benjamin Coates, J. C. Wallace, Harvey Eastem and John Drew, all of whom live in the town of Davenport state of Iowa – That this deponent cannot safely proceed to trial without said witnesses, that he can prove by said witnesses that at the time said Horses was stolen as charged by the Prosecuting witness this deponent

8th

was in said Town of Davenport & had not any thing to do with it in any shape or manner whatever and that this defendants character is good — that this deponent has been for eight months last past engaged in the mercantile business at said Davenport in said state of Iowa, and this affiant says, that this affidavit is made in good faith and not for the purpose of delay or the hindrance of public justice.

Subscribed & sworn to before me this ninth day of October. A D 1862

Joseph H. Forrest
Clerk.

Wm Clark

4 4

And afterwards to wit on the Ninth day of October in the year last aforesaid it being the term of Court aforesaid, the following among other proceedings were had and entered of Record in said Court, which said proceedings are in the words and figures following to wit:

The People of the State of Illinois

3470. vs. Indictment for Larceny.

William Clark

H

9th

This day come the said People by Joseph Knox States Attorney and the said defendant as well in his own proper person as by his Counsel S. M. Fulton Esq also come and now moves the Court for a continuance of this cause and the Court having heard Counsel as well in support of said motion, as in opposition thereto and being fully advised in the premises, orders that said motion be and the same is hereby overruled, to which ruling of the Court in overruling said motion for a continuance the said defendant by his Counsel then and there excepts.

And now issue being joined, it is ordered by the Court, that a Jury come, thereupon come a Jury of good and lawful men to wit: William Orend, David C. Geary, Gottlieb Leibbrandt, W. Keller, W. H. Haase, Jos. Holderness, John Daly

10th

Henry Finks, Thomas Kelly, Thomas Holt, Geo Coleman, Jam. Campbell, who were duly empanneled and sworn and they hearing the testimony of witnesses, arguments of Counsel and instructions of the Court, retire in charge of a sworn officer of the Court to consider of their Verdict, and afterwards return into Court again and for a Verdict say "We the Jury find the defendant guilty as charged in the Indictment, we find the value of the property stolen to be Eighty dollars, and fix the term of imprisonment in the States Penitentiary at One year"

And now come the said defendant by his Counsel and moves the Court for a new Trial and in arrest of Judgment and the Court not being advised in the premises takes said motion under consideration and orders the said defendant to be remanded

And afterwards to wit on the Twenty Second day of October in the

11th

year last aforesaid, it being the term of Court aforesaid, the following among other proceedings were had and entered of Record in said Court, which said proceedings are in the words and figures following to wit.

The People of the State of Illinois.
3470. vs. Indictment for Larceny.
William Clark.

This day come the said People by Joseph Knox States Attorney and the said defendant as well in his own proper person as by his Counsel also come and the Court having considered the motion for a new trial and the motion in arrest of Judgment heretofore made herein by the said defendant, and he being now fully advised in the premises orders that the said motion for a new trial and said motion in arrest of Judgment be and the same are hereby overruled, to which ruling of the Court, in overruling said motion for a new trial and said motion in arrest of

12th

Judgment, the said defendant by his Counsel then and there excepts. and now neither the said defendant nor his Counsel for him saying anything further, why the Judgment of the Court should not now be pronounced against him on the Verdict of Guilty heretofore rendered in this cause.

Therefore it is ordered and adjudged by the Court, that the said defendant William Clark be taken from the bar of this Court to the Common Jail of Cook County, from whence he came, and from thence by the Sheriff of Cook County within Ten days from and after the adjournment of this Court to the State Penitentiary at Joliet and to be delivered to the Warden or Keeper of said Penitentiary and the said Warden or Keeper is hereby required and commanded to take the body of said defendant William Clark and confine him in said Penitentiary in a safe and secure custody, for and during the term of One year from and after the first day of May One Thousand Eight Hundred Sixty Six. (the said defendant having been sentenced by the Court on another Verdict of Guilty, rendered

13th

at this Term to three years and six months imprisonment, which said time expires on the aforesaid first day of May A. D. 1866.) one day of said term in solitary confinement and the residue of said term at hard labor, and that he be thereafter discharged.

It is further ordered by the Court that the said defendant pay all the costs of these proceedings and that execution issue therefor.

14th

11

Be it remembered that the People to prove their said issue called as a witness, Alfred Brewington who being duly sworn in open Court testified as follows. I came to this City to identify some Horses which I understood were here, The Sheriff of Henry County sent word to the Sheriff of Mercer County - That the Scott Horses was in Chicago and that a man by the name of Clark had stolen them,

15th

To what the sheriff of Henry County told the Sheriff of Mercer County, to wit. That Scotts Horses were in Chicago and that Clark had stolen them, objected to by defence, objection overruled & defendant excepted.

I came here and Identified the Horses, They were a pair of old Horses, and are worth at cash value forty or fifty dollars apiece. I delivered the Horses to Mr Scott, They were setting in the yard shelling corn when I came in to their yard with the Horses, They cried for Joy when they saw their old family team coming back, to what Mr & Mrs Scott did or said, objected to by defence. objection overruled and defendants excepted, I know nothing further about the matter,

Cross.

Mr Scott lives about fifteen miles from Rock Island - About one hundred and ninety

16th

Seven miles from here,

The People then called as a witness John. R. Burns, who testified as follows,

I live in Henry County, Archabold Scott told me that he heard of his Horses in Chicago, (To what Archbold Scott told Burns objected to by defence, objection overruled by the Court - defendant then & there excepted.) and wanted me to goe after them, I came to Chicago and found the Horses here, I know them well, there cash value is about fifty dollars each, They are old Horse, I took the same Horses & delivered them to Archbold Scott, he and his wife knew them well and cried for Joy when they received them Back, (To what Scott & his wife said or did when they received the Horses back - objected to by defence, objection overruled by the Court and defendant then & there excepted.

The People then called as a witness, Joseph Dixon, who testified as follows, I am a Policeman, I found these two Horses, One at Mr Dennis Buchanans Barn Corner of water & market street & the other on the north side, at the corner of Division & north wells street, I delivered them to Burns, One was a Small Bay Horse & the other was a sorrell, One of them I saw this man Clark leading, One I found at Buchanans stable, I arrested the defendant, I asked him where he got the Horses,

8d
17th

He said that he got them of a man by the name of Heflin on Kinzie street on the North side, I followed the defendant into Mr Buchanans Barn corner of Market & south water street, Mary Buchanan the wife of Dennis Buchanan would not willing let them goe without twelve dollars, I agreed it should be paid & took the Horses, I advertised the Horses, John M. Burns came here after the Horses, I delivered the same Horses to him.

Cross examination.

The defendant Clark told me he got the Horses of Heflin, He disclaimed to own them but always said that they belonged to Heflin, I arrested Heflin.- we kept him locked up some time & then let him goe, I do not know what became of him, I arrested him after I arrested Clark, Mrs Buchanan described him to me, as one of the men who came there to their stable with the Horses, Clark told me he was takeing care of them for Heflin.

The People then called as a witness, Elizabeth Scott who testified as follows,

I live in Henry County, Illinois, On the night of the seventh of August last my husband Archabold Scott put into his pasture two Bay mares, The next morning they were gone, They were his property, He is sick abed and could not come

#
18th

here, The Horses are worth One hundred dollars apiece to us, John R. Burns brought the Horses Home, I knew the Horses was in Chicago, ~~and that Clark the man who stole them was in Jail in Chicago~~, because the sheriff of Mercer County sent word to the sheriff of Henry County, That the Horses was in Chicago and that Clark the man who stole them was in Jail. (To what the sheriff of Mercer County told the sheriff of Henry County, objected to by defence, objection overruled by the Court and the defendant excepted, They are our old family Team, I know the Horses that was returned to us by Burns to be the same Horses that was taken from us on the night of the seventh of August last.

Cross.

I do not know what the cash value of the Horses is, They are worth one hundred dollars each to us, I know nothing about this matter except what I have stated.

The People then called as a witness, Mary Buchanan, who testified as follows. This defendant came to our Barn sunday morning and brought a Horse there, He then went and brought two more, I know this is the man, My husband lent him twelve Dollars, He said that he wanted to pay frieght on some Horses that were

5th
19th

at the depot, I did not want my husband to lend him the money, because I thought the Horses was stolen, (To what she thought objected to by defence, objection overruled by the Court, and defendent exepted) my husband let him have twelve dollars and he left a Horse as security, for the money, Our stable is in this City.

Cross

There was another man came with this one, He was a tall slim dark skined man with light whiskers, I remember this man, He borrowed twelve dollars of my husband to pay the frieght on some Horses the other man was present, He sat on the steps close by with a newspaper up to his face, He seemed to be writeing something with a pencil, He told this man to feed the Horses and take good care of them, He told my husband to feed and take care of them too, One of Bradlys men arrested both of these men, and took the Horses away, The man that took the Horses away said that he was an officer, and that he would be responsible for the twelve dollars, I saw both of the men this man Clark and the other man in Mr Bradlys office, I should not know the other man if I saw him, This man came to the stable first with one Horse then the other man & he came with Two Horses.

6. ~~4~~
20th

Here the People rested.

No evidence for the defence.

The Counsel for defendant moved in arrest of Judgement, and for a new trial, the Court overruled said motions, to which ruling of the Court the defendant then and there excepted, and prayed an appeal to the supreme Court of the State of Illinois and tenders this his Bill of exceptions, to which the said R. S. Wilson Judge of said Court has set his hand and seal this twenty second day of October A.D. 1862.

R. S. Wilson
Recorder

The People of the state of Illinois.
vs.
William Clark

Bill of Exceptions.

Filed
October 23d A.D. 1862
J. K. C. Forst
Clerk

2291

28th

I, Joseph Knox, States Attorney, having prosecuted the case of the People of the State of Illinois versus William Clark, and examined the Witnesses in open Court, and having carefully examined the foregoing Record do hereby certify that in my opinion the foregoing Record contains a full, true and perfect history of the proceedings had on the trial of said cause and that the testimony is correct as given on the trial of said cause in the Recorders Court of the City of Chicago at the October Term of said Court A.D. 1862.

And I do further certify that in case a Supersedeas is granted in said cause, it is a proper case wherein the prisoner should be admitted to Bail.

Joseph Knox
States Atty

30th

State of Illinois
County of Cook } ss.
City of Chicago

I, Joseph K. C. Forest, Clerk of the Recorders Court of the City of Chicago, County of Cook and State of Illinois do hereby certify the above and foregoing to be a true and complete copy of all the proceedings entered of Record and of all the papers on file in a certain cause heretofore pending in said Court wherein The People of the State of Illinois were Plaintiff and William Clark was defendant

Witness, Joseph K. C. Forest Clerk of said Court and the seal thereof at Chicago, this Fifteenth day of December A. D. 1862.

Jd. K. C. Forest
Clerk

Let a supersedeas issue in this cause
Jany 30. 1863

J. D. Caton

32

Now comes the defendant and says that in the Record and proceedings aforesaid, and in the rendition of the Judgement aforesaid, There is manifest error in this, to wit;

1st The Court erred in permitting improper evidence to be given to the Jury on the part of the People.

2d The Court erred in overruling the defendants objections made in the progress of the trial.

3d The Court erred in overruling the motion for the continuance of the cause.

4th The Court erred in overruling the defendants motion in arrest of Judgement.

5th The Court erred in pronouncing Judgement on the verdict.

Samuel McFalker
Defendants Attorney

And now comes the said people of the State of Illinois by D. P. Jones States attorney & say that in the record and proceedings aforesaid and in the rendition of the judgement aforesaid there is no error wherefore they pray Judgement &c

D. P. Jones State's atty

1 5

William Clark
vs
The People &c
Record & errors

Filed Jany. 30. 1863.
L. Leland
Clk.

Fees

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the Recorders Court ~~for the County~~ of the City of Chicago Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Recorders Court of the City of Chicago ~~County~~, before the Judge thereof, between

The People of the State of Illinois

plaintiffs and

William Clark

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

William Clark

as we are informed by his complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 30 day of January in the Year of Our Lord One Thousand Eight Hundred and Sixty three.

L. Leland
Clerk of the Supreme Court.

5 - 155

William Clark

No. vs.

The People &c.

**WRIT OF ERROR.**

*This Writ of Error is made a Supersedeas, and as such is to be obeyed by all concerned.*

L. Leland
Clerk.

FILED Jany. 30. A. D. 1863,

L. Leland
Clerk.

# SUPREME COURT,

## State of Illinois,

APRIL TERM, A. D., 1863.

WILLIAM CLARK,

PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

DEFENDANTS IN ERROR.

## BRIEF.

Pages of Abstract.

2 What Mary Buchanan thought and talked with her husband is clearly improper evidence. First, As being hearsay and irrelevant to the issue. Secondly, Its tendency was to prejudice the minds of the Jury.

Volume 1, Greenleaf's Evidence, 8th Edition, Page 70, Section 52. Page 584, Section 448.

2 The Court should have sustained the Defendant's objection. The overruling of which is clearly error.

Pos. Cr. Sa. p 16 Chitty, 2 Carr & Kir. 970 2 Car. & P. 454 State v Merrill 19 Main 369 State v Smith 2 Jewell 404.

The Prosecution sought to establish the Indictment, by proof of the Defendant's possession of the horses. (See the testimony of Dixon and Mary Buchanan.) They utterly failed in this — but did prove
2 and 3 the possession in Heflin. (See testimony of Mary Buchanan.) Heflin orders and controls the Defendant and the horses. *Orders the Defendant to feed and take good care of them. Also orders Mr. Buchanan to do the same. The Defendant disclaims to own any or either of the horses, but tells where another horse is, and says that they all belong*
2 *to Heflin, and that he is taking care of them for Heflin.* (See Dixon's testimony.) Hence this being his relation to Heflin and the horses, Heflin orders him to do so and so. The account which he gives of his
2 connection with the horses, as sworn to by Dixon, to wit: That he is taking care of them for Heflin is not upon its face unreasonable or improbable, and especially when the evidence shows that Heflin was

ordering him about in the premises. In order to show his possession of the property, the State's Attorney ought to have shown upon the trial of the cause, that the Defendant's statement, about him taking care of the horses for Heflin was untrue.

Rex vs. Abraham, 2d Carr & K., 550, Roscoe's Criminal Evidence, 5th American Edition, page 79, Crowhust's case there cited. 1st Carr & K., page 370. 1st Volume Archbold's Criminal Practice and Pleading, 6th Edition, pages 117 and 118, Note (1.)

It cannot be doubted from the evidence, that the People upon the trial of the cause, clearly showed the possession of the horses to be in Heflin, and not in the Defendant. If Heflin was an honest, upright
2 and 3 man, why his connection with the horses, as Mary Buchanan testifies? Why did not the State's Attorney produce him upon the trial to show the Defendant's statement untrue. Unfortunately for Clark the law shut his mouth, and he can give no account of the transaction, except as he wrings it from the mouths of the reluctant witnesses for the Prosecution.

The law presumes the Defendant innocent. And before he can be legally convicted, this presumption must be overcome by evidence which shows his guilt, or at least raises a violent presumption that he is guilty. It not being shown that the Defendant was in possession of the horses, otherwise than as the servant or special agent of Heflin, we candidly submit that he is improperly convicted in this case, and that the presumption of innocence, which the law raised for the Defendant, was not overthrown or its force destroyed by the evidence on behalf of the Prosecution — but on the contrary was strengthened by
2 their evidence, showing so clearly the possession of the horses in Heflin.

1st Volume Greenleaf on Evidence, 8th Edition page 42, section 34 and 35. Sixth Edition, 1st Volume, Archbold's C. P. and P., page 117, 2 Note (1).

Arthur J. Windett
for Plff. in Error.

SAMUEL M. FELKER,

*Of Counsel with the Plaintiff in Error.*

6-156

Williams & Lee
vs
The People

Defft Brief

Filed May 6, 1863
LLLeonard
Clk

# SUPREME COURT,

## State of Illinois,

APRIL TERM, A. D., 1863.

WILLIAM CLARK,

PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

DEFENDANTS IN ERROR.

## ABSTRACT.

Page of Record.

5 Indictment in this case, filed October 8, A. D. 1862, in the Recorder's Court, of the city of Chicago, October Term, A. D. 1862, contains one count for larceny.

4 "That William Clark, on the First day of October, in the year of our Lord One Thousand Eight Hundred and Sixty-two, in said city of Chicago, in the County and State aforesaid, one Bay Mare of the value of one hundred dollars; one Bay Mare of the value of one hundred dollars, the personal goods and property of Archabold Scott,
4 then and there being found, did then and there feloniously steal, take and carry away, contrary to the statute," etc.

6 To this Indictment on the 8th day of October, A. D. 1862, the Defendant in proper person plead not guilty.

6 On same day and year last aforesaid, Court ordered the plea accepted and entered of Record, and the Defendant remanded back to jail.

7 Affidavit of Defendant for continuance filed in said Recorder's Court on the 10th day of said October, A. D. 1862, sets up that Clark was duly sworn, and says that he is the Defendant in the case; that the case is now pending in said Court, and that the Indictment was found at said October Term of said Court, and filed in said Court on the 8th day of October, A. D. 1862. That he has five witnesses in said cause; that their names are Daniel Dodd, Benjamin Coates,

J. C. Wallace, Harvey Eastman and John Drew, all of whom live in the town of Davenport, State of Iowa; that he cannot safely proceed
7 to trial without said witnesses; that he can prove by said witnesses that at the time said horses were stolen as charged by the prosecuting
8 witness, this deponent was in said town of Davenport, and had nothing to do with it in any shape or manner whatever, and that this deponent's character is good; that for eight months last past, this deponent has been engaged in the mercantile business in the said town of Davenport; that this affidavit is not made for delay or the hindrance
8 of public justice, but is made in good faith, etc.

8 October 10, 1862, motion for continuance overruled by the Court,
9 to which ruling of the Court in overruling said motion for a continuance, the said Defendant by his counsel then and there excepted.

On said 10th day of October, A. D., 1862, it was ordered by the
9 Court that a Jury come; the Jury was called, selected and sworn to try the case.

The People then called as their first witness Alfred Brewington,
15 who said: I came to this city to identify some horses which I understood was here. The Sheriff of Henry county sent word to the Sheriff of Mercer county, that the Scott horses were in Chicago, and that a man by the name of Clark had stolen them. (To what the Sheriff of Henry county told the Sheriff of Mercer county, to wit: That the Scott horses were in Chicago, and that Clark had stolen them, object-
15 ed to by defence, objection overruled, and the Defendant excepted.) I came here and identified the horses. They are worth, at cash value, forty or fifty dollars apiece. I delivered horses to Scott. Scott and his wife were sitting in the yard shelling corn. When I came in to their yard with the horses, they cried for joy when they saw their old family team coming back. (To what Mr. and Mrs. Scott did or said, objected to by defence, objection overruled, and Defendant excepted.)
15 I know nothing further about this matter.

On Cross Examination said: Mr. Scott lives about fifteen miles
15 & 16from Rock Island; about one hundred and ninety-seven miles from here.

The People then called John M. Burns, who said: I live in Henry county. Archabold Scott told me that he heard of his horses in Chicago, (To what Archabold Scott told Burns objected to by de-
16 fence, objection overruled by the Court, and the Defendant then and there excepted,) and wanted me to go after them. I came to Chicago

and found the horses here. I know them well. Their cash value is about fifty dollars each. They are old horses. I took the same horses and delivered them to Archabold Scott. He and his wife knew them well, and cried for joy when they received them back. (To what Scott and his wife did or said, when they received the horses back, objected to by defence, objection overruled by the Court, and
16 the Defendant then and there excepted).

The People then called as a witness Joseph Dixon, who said: I
16 am a policeman. I found these two horses, one at Dennis Buchanan's barn, corner of Water and Market streets, and the other on the North
16 side, at the corner of Division and North Wells streets. I delivered them to Burns. One was a small bay horse and the other was a sorrel. One of them I saw this man Clark leading. One I found at Buchanan's stable. I arrested the Defendant. I asked him where he
17 got the horses. He said he got them of a man by the name of Heflin, on Kenzie street, on the North side. I followed the Defendant into Mr. Buchanan's barn, corner of Market and South Water streets. Mary Buchanan, the wife of Dennis Buchanan, would not willingly let them go without twelve dollars; I agreed it should be paid, and took the horses. I advertised the horses. John M. Burns came here after the horses. I delivered the same horses to him.

On Cross Examination he said: The Defendant, Clark, told me
17 he got the horses of Heflin. He disclaimed to own them, but always said that they belonged to Heflin. I arrested Heflin; we kept him locked up some time, and then let him go. I do not know what became of him. I arrested him after I arrested Clark. Mrs. Buchanan
17 described him to me, as one of the men who came there to their stable with the horses. Clark told me he was taking care of them for Heflin.

The People then called Elizabeth Scott, who said: I live in Henry county, Illinois. On the night of the 7th of August last, my husband, Archabold Scott, put into his pasture two bay mares. The next
17 morning they were gone. They were his property. He is sick abed,
18 and could not come here. The horses are worth one hundred dollars apiece to us. John M. Burns brought the horses home. I knew the horses were in Chicago, because the Sheriff of Mercer county sent word to the Sheriff of Henry county, that the horses were in Chicago, and that Clark, the man who stole them, was in jail. (To what the Sheriff of Mercer county told the Sheriff of Henry county, objected to by defence, objection overruled by the Court, and the Defendant excepted.) They were our old family team. I know the horses that

were returned to us by Burns, to be the same horses that were taken from us on the night of the 7th of August last.

18 On Cross Examination, she said: I do not know what the cash value of the horses are; they are worth one hundred dollars each to us; I know nothing about this matter except what I have stated.

The People then called as a witness, Mary Buchanan, who said: This Defendant came to our barn Sunday morning, and brought a horse there; he then went and brought two more. I know this is the same man. My husband lent him twelve dollars. He said that he wanted to pay freight on some horses that were at the depot. I did
19 not want my husband to lend him the money, because I thought the horses were stolen. (To what she thought objected to by defence, objection overruled by the Court, and Defendant excepted.) My husband let him have twelve dollars, and he left a horse as security for
19 the money. Our stable is in this city.

On Cross Examination, she said: There was another man came with this one. He was a tall, slim, dark-skinned man, with light whiskers. I remember this man. He borrowed twelve dollars of my husband to pay the freight on some horses. The other man was present. He sat on the steps close by, with a newspaper up to his face. He seemed to be writing something with a pencil. He told this man to feed the horses and take good care of them. He told my husband to feed and take care of them to. One of Bradley's men arrested both of these men, and took the horses away. The man that took the horses away said that he was an officer, and that he would be responsible for the twelve dollars. I saw both of the men, this man Clark and the other man, in Mr. Bradley's office. I should not know the other man if I saw him. This man came to the stable first with one
19 & 20horse. Then the other man and he came with two horses.

Certificate, that the following is all of the evidence given on the
20 trial of this cause, both on behalf of the People and the Defendant.

## VERDICT.

10 We, the Jury, find the Defendant guilty as charged in the Indictment. We find the value of the property stolen, to be eighty dollars,
10 and fix the term of imprisonment in the State Penitentiary at one year.

Motion in arrest of Judgment and for new trial. The Court
10 takes motion under advisement, and orders the prisoner remanded to jail.

October 22, A. D. 1862. Court overrules the Defendant's motion in arrest of Judgment and for new trial. To which ruling of the
12 Court in overruling said motion, the Defendant then and there excepted.

## SENTENCE.

12 That the said Defendant, William Clark, be taken from the Bar of the Court to the common jail of Cook county, from whence he came, and from thence by the Sheriff of Cook county, within ten days from and after the adjournment of this Court, to the State Penitentiary at Joliet, and to be delivered to the warden or keeper of said Penitentiary, and the said warden or keeper is hereby required and commanded to take the body of said Defendant, William Clark, and confine him in said Penitentiary, in a safe and secure custody, for and during the term of one year, from and after the First day of May,
12 A. D. 1866, (the said Defendant having been sentenced by the Court
13 on another verdict of guilty, rendered at this term, to three years and
13 six months imprisonment, which said time expires on the aforesaid First day of May, A. D. 1866,) one day of said term in solitary confinement, and the residue of said term at hard labor, and that he be thereafter discharged.

## JUDGMENT FOR COSTS.

13 It is further ordered by the Court, that the said Defendant pay all the costs of these proceedings, and that Execution be issued therefor.

20 Signature of the Judge to Bill of Exceptions.

R. S. WILSON, Recorder.

22 Filing of the Bill of Exceptions, filed October 23, A. D. 1862.

J. K. C. FORREST, Clerk.

28 Certificate of State's Attorney expressive of his opinion that the foregoing Record contains a full, true and perfect history of the pro-

ceedings had in the case, and that in case a *supersedeas* is granted, it is proper that the prisoner should be allowed bail.

30 Certificate of the Clerk of the Recorder's Court, that the foregoing Record is a true and complete copy of all the proceedings had in the case, and a perfect copy of all papers on file in his office, etc.

SAMUEL M. FELKER,

*Of Counsel with the Plaintiff in Error.*

5

Clark
vs
The People

Abstract

Filed Apr 25
1863

L Solano
Cl

# SUPREME COURT,

## State of Illinois,

APRIL TERM, A. D., 1863.

WILLIAM CLARK,

PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

DEFENDANTS IN ERROR.

## ABSTRACT.

Page of Record.

5 Indictment in this case, filed October 8, A. D. 1862, in the Recorder's Court, of the city of Chicago, October Term, A. D. 1862, contains one count for larceny.

4 "That William Clark, on the First day of October, in the year of our Lord One Thousand Eight Hundred and Sixty-two, in said city of Chicago, in the County and State aforesaid, one Bay Mare of the value of one hundred dollars; one Bay Mare of the value of one hundred dollars, the personal goods and property of Archabold Scott,
4 then and there being found, did then and there feloniously steal, take and carry away, contrary to the statute," etc.

6 To this Indictment on the 8th day of October, A. D. 1862, the Defendant in proper person plead not guilty.

6 On same day and year last aforesaid, Court ordered the plea accepted and entered of Record, and the Defendant remanded back to jail.

7 Affidavit of Defendant for continuance filed in said Recorder's Court on the 10th day of said October, A. D. 1862, sets up that Clark was duly sworn, and says that he is the Defendant in the case; that the case is now pending in said Court, and that the Indictment was found at said October Term of said Court, and filed in said Court on the 8th day of October, A. D. 1862. That he has five witnesses in said cause; that their names are Daniel Dodd, Benjamin Coates,

J. C. Wallace, Harvey Eastman and John Drew, all of whom live in the town of Davenport, State of Iowa; that he cannot safely proceed
7 to trial without said witnesses; that he can prove by said witnesses that at the time said horses were stolen as charged by the prosecuting
8 witness, this deponent was in said town of Davenport, and had nothing to do with it in any shape or manner whatever, and that this deponent's character is good; that for eight months last past, this deponent has been engaged in the mercantile business in the said town of Davenport; that this affidavit is not made for delay or the hindrance
8 of public justice, but is made in good faith, etc.

8 October 10, 1862, motion for continuance overruled by the Court,
9 to which ruling of the Court in overruling said motion for a continuance, the said Defendant by his counsel then and there excepted.

On said 10th day of October, A. D., 1862, it was ordered by the
9 Court that a Jury come; the Jury was called, selected and sworn to try the case.

The People then called as their first witness Alfred Brewington,
15 who said: I came to this city to identify some horses which I understood was here. The Sheriff of Henry county sent word to the Sheriff of Mercer county, that the Scott horses were in Chicago, and that a man by the name of Clark had stolen them. (To what the Sheriff of Henry county told the Sheriff of Mercer county, to wit: That the Scott horses were in Chicago, and that Clark had stolen them, object-
15 ed to by defence, objection overruled, and the Defendant excepted.) I came here and identified the horses. They are worth, at cash value, forty or fifty dollars apiece. I delivered horses to Scott. Scott and his wife were sitting in the yard shelling corn. When I came in to their yard with the horses, they cried for joy when they saw their old family team coming back. (To what Mr. and Mrs. Scott did or said, objected to by defence, objection overruled, and Defendant excepted.)
15 I know nothing further about this matter.

On Cross Examination said: Mr. Scott lives about fifteen miles
15 & 16from Rock Island; about one hundred and ninety-seven miles from here.

The People then called John M. Burns, who said: I live in Henry county. Archabold Scott told me that he heard of his horses in Chicago, (To what Archabold Scott told Burns objected to by de-
16 fence, objection overruled by the Court, and the Defendant then and there excepted,) and wanted me to go after them. I came to Chicago

and found the horses here. I know them well. Their cash value is about fifty dollars each. They are old horses. I took the same horses and delivered them to Archabold Scott. He and his wife knew them well, and cried for joy when they received them back. (To what Scott and his wife did or said, when they received the horses back, objected to by defence, objection overruled by the Court, and
16 the Defendant then and there excepted).

The People then called as a witness Joseph Dixon, who said: I
16 am a policeman. I found these two horses, one at Dennis Buchanan's barn, corner of Water and Market streets, and the other on the North
16 side, at the corner of Division and North Wells streets. I delivered them to Burns. One was a small bay horse and the other was a sorrel. One of them I saw this man Clark leading. One I found at Buchanan's stable. I arrested the Defendant. I asked him where he
17 got the horses. He said he got them of a man by the name of Heflin, on Kenzie street, on the North side. I followed the Defendant into Mr. Buchanan's barn, corner of Market and South Water streets. Mary Buchanan, the wife of Dennis Buchanan, would not willingly let them go without twelve dollars; I agreed it should be paid, and took the horses. I advertised the horses. John M. Burns came here after the horses. I delivered the same horses to him.

On Cross Examination he said: The Defendant, Clark, told me
17 he got the horses of Heflin. He disclaimed to own them, but always said that they belonged to Heflin. I arrested Heflin; we kept him locked up some time, and then let him go. I do not know what became of him. I arrested him after I arrested Clark. Mrs. Buchanan
17 described him to me, as one of the men who came there to their stable with the horses. Clark told me he was taking care of them for Heflin.

The People then called Elizabeth Scott, who said: I live in Henry county, Illinois. On the night of the 7th of August last, my husband, Archabold Scott, put into his pasture two bay mares. The next
17 morning they were gone. They were his property. He is sick abed,
18 and could not come here. The horses are worth one hundred dollars apiece to us. John M. Burns brought the horses home. I knew the horses were in Chicago, because the Sheriff of Mercer county sent word to the Sheriff of Henry county, that the horses were in Chicago, and that Clark, the man who stole them, was in jail. (To what the Sheriff of Mercer county told the Sheriff of Henry county, objected to by defence, objection overruled by the Court, and the Defendant excepted.) They were our old family team. I know the horses that

were returned to us by Burns, to be the same horses that were taken from us on the night of the 7th of August last.

18 On Cross Examination, she said: I do not know what the cash value of the horses are; they are worth one hundred dollars each to us; I know nothing about this matter except what I have stated.

The People then called as a witness, Mary Buchanan, who said: This Defendant came to our barn Sunday morning, and brought a horse there; he then went and brought two more. I know this is the same man. My husband lent him twelve dollars. He said that he wanted to pay freight on some horses that were at the depot. I did
19 not want my husband to lend him the money, because I thought the horses were stolen. (To what she thought objected to by defence, objection overruled by the Court, and Defendant excepted.) My husband let him have twelve dollars, and he left a horse as security for
19 the money. Our stable is in this city.

On Cross Examination, she said: There was another man came with this one. He was a tall, slim, dark-skinned man, with light whiskers. I remember this man. He borrowed twelve dollars of my husband to pay the freight on some horses. The other man was present. He sat on the steps close by, with a newspaper up to his face. He seemed to be writing something with a pencil. He told this man to feed the horses and take good care of them. He told my husband to feed and take care of them to. One of Bradley's men arrested both of these men, and took the horses away. The man that took the horses away said that he was an officer, and that he would be responsible for the twelve dollars. I saw both of the men, this man Clark and the other man, in Mr. Bradley's office. I should not know the other man if I saw him. This man came to the stable first with one
19 & 20horse. Then the other man and he came with two horses.

Certificate, that the following is all of the evidence given on the
20 trial of this cause, both on behalf of the People and the Defendant.

## VERDICT.

10 We, the Jury, find the Defendant guilty as charged in the Indictment. We find the value of the property stolen, to be eighty dollars,
10 and fix the term of imprisonment in the State Penitentiary at one year.

Motion in arrest of Judgment and for new trial. The Court
10 takes motion under advisement, and orders the prisoner remanded to jail.

October 22, A. D. 1862. Court overrules the Defendant's motion in arrest of Judgment and for new trial. To which ruling of the
12 Court in overruling said motion, the Defendant then and there excepted.

## SENTENCE.

12 That the said Defendant, William Clark, be taken from the Bar of the Court to the common jail of Cook county, from whence he came, and from thence by the Sheriff of Cook county, within ten days from and after the adjournment of this Court, to the State Penitentiary at Joliet, and to be delivered to the warden or keeper of said Penitentiary, and the said warden or keeper is hereby required and commanded to take the body of said Defendant, William Clark, and confine him in said Penitentiary, in a safe and secure custody, for and during the term of one year, from and after the First day of May,
12 A. D. 1866, (the said Defendant having been sentenced by the Court
13 on another verdict of guilty, rendered at this term, to three years and
13 six months imprisonment, which said time expires on the aforesaid First day of May, A. D. 1866,) one day of said term in solitary confinement, and the residue of said term at hard labor, and that he be thereafter discharged.

## JUDGMENT FOR COSTS.

13 It is further ordered by the Court, that the said Defendant pay all the costs of these proceedings, and that Execution be issued therefor.

20 Signature of the Judge to Bill of Exceptions.

R. S. WILSON, Recorder.

22 Filing of the Bill of Exceptions, filed October 23, A. D. 1862.

J. K. C. FORREST, Clerk.

28 Certificate of State's Attorney expressive of his opinion that the foregoing Record contains a full, true and perfect history of the pro-

ceedings had in the case, and that in case a *supersedeas* is granted, it is proper that the prisoner should be allowed bail.

30 Certificate of the Clerk of the Recorder's Court, that the foregoing Record is a true and complete copy of all the proceedings had in the case, and a perfect copy of all papers on file in his office, etc.

SAMUEL M. FELKER,

*Of Counsel with the Plaintiff in Error.*

5 — 155

Clark
vs
The People

Abstract

Filed April 25. 1843
L. Leland
Clk

# SUPREME COURT,

## State of Illinois,

APRIL TERM, A. D., 1863.

WILLIAM CLARK,

PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

DEFENDANTS IN ERROR.

## ABSTRACT.

Page of Record.

5 Indictment in this case, filed October 8, A. D. 1862, in the Recorder's Court, of the city of Chicago, October Term, A. D. 1862, contains one count for larceny.

4 "That William Clark, on the First day of October, in the year of our Lord One Thousand Eight Hundred and Sixty-two, in said city of Chicago, in the County and State aforesaid, one Bay Mare of the value of one hundred dollars; one Bay Mare of the value of one hundred dollars, the personal goods and property of Archabold Scott,
4 then and there being found, did then and there feloniously steal, take and carry away, contrary to the statute," etc.

6 To this Indictment on the 8th day of October, A. D. 1862, the Defendant in proper person plead not guilty.

6 On same day and year last aforesaid, Court ordered the plea accepted and entered of Record, and the Defendant remanded back to jail.

7 Affidavit of Defendant for continuance filed in said Recorder's Court on the 10th day of said October, A. D. 1862, sets up that Clark was duly sworn, and says that he is the Defendant in the case; that the case is now pending in said Court, and that the Indictment was found at said October Term of said Court, and filed in said Court on the 8th day of October, A. D. 1862. That he has five witnesses in said cause; that their names are Daniel Dodd, Benjamin Coates,

J. C. Wallace, Harvey Eastman and John Drew, all of whom live in the town of Davenport, State of Iowa; that he cannot safely proceed
7 to trial without said witnesses; that he can prove by said witnesses that at the time said horses were stolen as charged by the prosecuting
8 witness, this deponent was in said town of Davenport, and had nothing to do with it in any shape or manner whatever, and that this deponent's character is good; that for eight months last past, this deponent has been engaged in the mercantile business in the said town of Davenport; that this affidavit is not made for delay or the hindrance
8 of public justice, but is made in good faith, etc.

8 October 10, 1862, motion for continuance overruled by the Court,
9 to which ruling of the Court in overruling said motion for a continuance, the said Defendant by his counsel then and there excepted.

On said 10th day of October, A. D., 1862, it was ordered by the
9 Court that a Jury come; the Jury was called, selected and sworn to try the case.

The People then called as their first witness Alfred Brewington,
15 who said: I came to this city to identify some horses which I understood was here. The Sheriff of Henry county sent word to the Sheriff of Mercer county, that the Scott horses were in Chicago, and that a man by the name of Clark had stolen them. (To what the Sheriff of Henry county told the Sheriff of Mercer county, to wit: That the Scott horses were in Chicago, and that Clark had stolen them, object-
15 ed to by defence, objection overruled, and the Defendant excepted.) I came here and identified the horses. They are worth, at cash value, forty or fifty dollars apiece. I delivered horses to Scott. Scott and his wife were sitting in the yard shelling corn. When I came in to their yard with the horses, they cried for joy when they saw their old family team coming back. (To what Mr. and Mrs. Scott did or said, objected to by defence, objection overruled, and Defendant excepted.)
15 I know nothing further about this matter.

On Cross Examination said: Mr. Scott lives about fifteen miles
15 & 16from Rock Island; about one hundred and ninety-seven miles from here.

The People then called John M. Burns, who said: I live in Henry county. Archabold Scott told me that he heard of his horses in Chicago, (To what Archabold Scott told Burns objected to by de-
16 fence, objection overruled by the Court, and the Defendant then and there excepted,) and wanted me to go after them. I came to Chicago

and found the horses here. I know them well. Their cash value is about fifty dollars each. They are old horses. I took the same horses and delivered them to Archabold Scott. He and his wife knew them well, and cried for joy when they received them back. (To what Scott and his wife did or said, when they received the horses back, objected to by defence, objection overruled by the Court, and
16 the Defendant then and there excepted).

The People then called as a witness Joseph Dixon, who said: I
16 am a policeman. I found these two horses, one at Dennis Buchanan's barn, corner of Water and Market streets, and the other on the North
16 side, at the corner of Division and North Wells streets. I delivered them to Burns. One was a small bay horse and the other was a sorrel. One of them I saw this man Clark leading. One I found at Buchanan's stable. I arrested the Defendant. I asked him where he
17 got the horses. He said he got them of a man by the name of Heflin, on Kenzie street, on the North side. I followed the Defendant into Mr. Buchanan's barn, corner of Market and South Water streets. Mary Buchanan, the wife of Dennis Buchanan, would not willingly let them go without twelve dollars; I agreed it should be paid, and took the horses. I advertised the horses. John M. Burns came here after the horses. I delivered the same horses to him.

On Cross Examination he said: The Defendant, Clark, told me
17 he got the horses of Heflin. He disclaimed to own them, but always said that they belonged to Heflin. I arrested Heflin; we kept him locked up some time, and then let him go. I do not know what became of him. I arrested him after I arrested Clark. Mrs. Buchanan
17 described him to me, as one of the men who came there to their stable with the horses. Clark told me he was taking care of them for Heflin.

Motion in arrest of Judgment and for new trial. The Court
10 takes motion under advisement, and orders the prisoner remanded to jail.

October 22, A. D. 1862. Court overrules the Defendant's motion in arrest of Judgment and for new trial. To which ruling of the
12 Court in overruling said motion, the Defendant then and there excepted.

## SENTENCE.

12 That the said Defendant, William Clark, be taken from the Bar of the Court to the common jail of Cook county, from whence he came, and from thence by the Sheriff of Cook county, within ten days from and after the adjournment of this Court, to the State Penitentiary at Joliet, and to be delivered to the warden or keeper of said Penitentiary, and the said warden or keeper is hereby required and commanded to take the body of said Defendant, William Clark, and confine him in said Penitentiary, in a safe and secure custody, for and during the term of one year, from and after the First day of May,
12 A. D. 1866, (the said Defendant having been sentenced by the Court
13 on another verdict of guilty, rendered at this term, to three years and
13 six months imprisonment, which said time expires on the aforesaid First day of May, A. D. 1866,) one day of said term in solitary confinement, and the residue of said term at hard labor, and that he be thereafter discharged.

## JUDGMENT FOR COSTS.

13 It is further ordered by the Court, that the said Defendant pay all the costs of these proceedings, and that Execution be issued therefor.

20 Signature of the Judge to Bill of Exceptions.

R. S. WILSON, Recorder.

22 Filing of the Bill of Exceptions, filed October 23, A. D. 1862.

J. K. C. FORREST, Clerk.

28 Certificate of State's Attorney expressive of his opinion that the foregoing Record contains a full, true and perfect history of the pro-

ceedings had in the case, and that in case a *supersedeas* is granted, it is proper that the prisoner should be allowed bail.

30 Certificate of the Clerk of the Recorder's Court, that the foregoing Record is a true and complete copy of all the proceedings had in the case, and a perfect copy of all papers on file in his office, etc.

SAMUEL M. FELKER,

*Of Counsel with the Plaintiff in Error.*

5 = 155

Clark
vs
The People

abstract

Filed Apr 25
1863

S Leland
Clk

Walker

Mr. Justice Walker delivered the opinion of the court:

~~Walker J.~~ It is insisted that this judgment should be reversed, because the court below, admitted improper evidence. It was what Mrs. Buchanan said at the time the horses were brought to the stable of her husband, ~~that~~ and the word sent to the ~~citizens~~ Sheriff of Macon County, that was objected to, as improper evidence. The opinion of ~~the~~ the witness, expressed to her husband, in the absence of the prisoner, that the horses were stolen, was clearly incompetent evidence. And of the same character was the message sent the ~~county~~ sheriff, that they had arrested ~~Clark defendant~~ a accused, who had stolen the horses. This was no part of the res gestae. It was wholly disconnected with any thing done by the prisoner and ~~was~~ he was not in the least responsible for it.

But the question arises, whether this evidence could in any event operate to the prejudice of the prisoner. If so the judgment must be reversed. The object of instituting courts is to dispense justice, and prevent wrong. And when justice has ~~to~~ been

fully and properly dispensed in a case, the object of the law has been attained. It therefore follows, that if the great object of a trial has been had, and slight departures from forms have occurred, it is not a sufficient reason for setting aside the proceedings, and for pursuing again all of the forms of a new trial to arrive at the same ~~to end~~ result. If then this evidence could not have prejudiced the rights of the accused, there is nothing of which he can rightfully complain, and hence the judgment should not be disturbed.

When considered in connection with all the evidence in the case, it seems to be entirely immaterial, and could ~~hesu~~ not have changed the result of the ~~trial~~ verdict. It seems only to have been incidentally stated by the witnesses, and explanatory ~~of~~ of other acts that had been done by ~~the witnesses~~ them and not called for, or elicited upon by the prosecution. ~~Hence say~~ It could not have misled the jury and consequently was not prejudicial to the

rights of the accused.

Upon the whole evidence of the case, it is urged that the jury were not warranted in their finding. The theft of the horses by some one is clearly proved. Of this there seems to be no doubt. And as evidence of the guilt of the accused he is found a few days afterwards in the possession of the horses. It is proved, that he took one of them to the stable of the witness, and left it to be kept, and also pledged it for money to pay the rail road freight on the others. When he pledged this horse he said nothing about its belonging to another person. He acted with it in all respects as though it was his own. Nor did he say any thing ~~about~~ to the stable keeper about it or the others ~~belo~~ belonging to Steffin, at that or the subsequent interview. Neither of them pretended that Steffin was the owner. All that is alleged upon to prove that fact was Steffin's directions to the stable keeper and to accused to feed and take good care of the horses, when the others

were afterwards brought to the stable
and also the declarations of the pris
=oner at the time he was arrested.
These directions of Hefflin in
referred to the care of the horses,
and ~~upon~~ the prisoner's declarati
=ons, ~~that~~ to the officer who arrest
=ed him, that the horses belonged
to Hefflin, and that he was only
~~his agent for their sale~~ taking care of the horses
=s for Hefflin, was all properly
before the jury for their consider
=ation. They were evidence, and the
jury no doubt gave them their
full weight, when considered
in connection with the other cir
cumstances in the case. He, throughout,
=out, acted as the owner of the horses.
He pledged one to obtain money to
pay freight on the others. He ~~did~~
~~all~~ made all of the arrangements
~~with~~ the keeper of the stable, and bo
=ught them all and placed them in
his ~~the~~ custody. ~~of the~~ ~~These fac~~ And Hef
=flin said nothing to indicate, that
he claimed any interest in the prop
=erty. These facts clearly prove, that
accused was the principal in the
transaction, the active man, and

not that he was acting for another. In view of all of this evidence, we are unable to see, how the jury could have arrived at a different conclusion than they did, and the judgment of the court below must be affirmed ~~and the cause re~~

Judgment affirmed.

William Clark,

v.

The People of the State of Illinois.

Writ of error to the Recorder's Court of the City of Chicago.

Mr. Justice Walker: The facts in this ~~case~~ do ~~doubt~~ not differ materially from the preceding case, and do not require a separate opinion, as all of the questions involved in this case, are discussed and determined in that ~~case~~. The judgment of the court below is affirmed.

Judgment affirmed.

Wm Clark

5 Pd. W.S. 155
6 Pd. 156.

The People

Opinion by
Walworth J.

Recorded 1854 6
B. 12
Corp.

Supreme Court of the State of Illinois
April Term A.D. 1863

Mrs Clark
5 vs
The People

Points & Authorities for Defts in Error –

The motion for a continuance was properly overruled – Because ~~non constat~~. 1st that the witnesses were not present or could not have been procured & 2nd that there were not other available witnesses by whom the same facts could have been ~~pro~~ shown as by those named

What the owner of the horses & his wife did & said at the time the witness delivered the horses to them. & what the Sheriff & Scott told the witness when he started to go to Chicago to recover the horses for Scott were all a part of the res gestae

The evidence was not material to the issue & therefore it was not error to admit it 14 Ohio 386

Although the evidence was exceptionable yet there was sufficient legal testimony to support the verdict & no injustice was done ~~The verdict will not~~ A new trial will not therefore be granted

Whart. Am Crim. L 639
11 East 307 - 22 Pick 397
3 Serg & R 14

D P Jones
States Atty

~~The record does not show that objections was made to the evidence exception taken on the trial~~
~~3 Scam 63, Gil 448~~

6 P.D.

Wm Clark
vs
The People &c

Points & Authorities
for Defts in Error

Filed May 12. 1863
L. Leland
Clerk