

13381


No.

Supreme Court of Illinois

Myers

vs.

People

71641  7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 4.

PEOPLE'S CAUSES

Myers

vs
People

1861

1861.

1338/

State of Illinois. Supreme Court thereof
April Term, B.C. 1861,

Friedrich W Meyer

vs

The People &c

Points & authorities of Deft in error
the application for a change of
venue was properly overruled
the affidavit did not set forth
the particular facts & circumstances
upon which the application was
based as required by the law
establishing the recorder's Court of
the city of Chicago nor can error
be assigned upon the decision the
matter being in the discretion of
the Court - Section Laws 53 § 150
15 Ill 538

The evidence of
Daniel Carpenter was competent
Hazel & Smith were jointly
indicted with the Plff in error and
there was evidence tending to show
that Hazel & Smith had possession
of the horse and that it was
afterwards transferred to the Plff in
error - The evidence was sufficient
to warrant the jury in coming

to to the conclusion that Heazlett
& Smith were guilty of the larceny
of the horse and it was competent to
prove that the parties indicted
had been associated together in the
general business of stealing as
tending to show that the Plff
in error was an accomplice in
the larceny of the horse

The witness Carpenter was not an
approver - there is nothing in
record which even tends to show
any criminal intent on his part
and to constitute him such he
must have been indicted & accused
another for the purpose of clearing
himself

2 Hawk Pleas of the Crown 982

2 Hales " " " 67

8 Corv 712 / Chittys Crime 2603 Russell
on crimes 957

It is assumed by the counsel for
Plff in error that the crime was
committed beyond the jurisdiction
of the Recorders court. there is
nothing in the record upon which
this can be based ~~RR Jones~~
The defendant ~~states that~~

may be convicted in any
county through which he
may pass with the stolen
property, or into which he
may take it

Whart. Am. Crim L 159. & Phillips
Ev 891 Note 249

D. P. Jones
States aty

Myers 4-P.D.
or
The People

Prints & Authorizing
for Dep in Error

Filed May 1st 1861

Louise Leland
Clerk

State of Illinois Supreme Court thereof
April Term A.D. 1861

Fredrick W. Meyer }
vs
The People &c }

Points and authorities of Deft in Error
The application for a change
of venue was properly overruled the
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upon which the application was
based as required by the law
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were jointly indicted with the
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and that it was afterwards
transferred to the Plff in Error

The evidence was sufficient to warrant the jury in coming to the conclusion that Hazlett & Smith were guilty of the larceny of the horse and it was competent to prove that the parties indicted had been associated together in the general business of stealing so tending to show that the Plff in Error an accomplice in the larceny of the horse

The witness Carpenter was not an approver - There is nothing in the record which ever tended to show any criminal intent on his part and to constitute him such he must have been indicted & accused another for the purpose of clearing himself
2 Hawk Pleas of the Crown 282

2 Hales " " " " 67

8 Cow 712. Holtby's Crim L 603 Reason on Crimes 857

It is assumed by the counsel for Plff in Error that the crime was committed beyond the jurisdiction of the Recorders Court & there is nothing in the record upon which this can be based

~~XXXXXXXXXXXXXXXXXXXX~~

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/ Phillips Ev 891 Note 249 D. J. Jones
States Atty

Shires 4-17 D.
' as

The People

Prints & are themselves
for Degr in error

Filed & may 12th 1861

L. Leland

Clerk

STATE OF ILLINOIS, }
SUPREME COURT, ss.

The People of the State of Illinois,

To the Sheriff of the County of

La Salle

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Recorder's Court of the City of Chicago County; before the Judge thereof, between The People of the State of Illinois

plaintiffs and Frederick W. Myers, John Hasselt & John Smith

defendants, it is said that manifest error hath intervened, to the injury of the said Frederick W. Myers

as we are informed by his complaint the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Washington Bushnell State Attorney for said Supreme Court

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April A.D. 1868 next to hear the record and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Washington Bushnell

notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 7th day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty.

L. Leland

Clerk of the Supreme Court.

L. J. Baker Deputy

Shelf of La Salle
Fredrick W Myers

18 P.D.

No.

vs.

The People

SCIRE FACIAS.

FILED April 24th A. D. 1860

L. Deland

Gleick.

Executed this writ by reading
the same to the within named
Washington Bushnell on the
9th day of April 1860

In & Lt 60
1 mile $\frac{5}{65}$

F. Warner Giff
By
J. W. Foggy

SUPREME COURT OF ILLINOIS.

FREDERICK W. MYERS, IN ERROR,

vs.

THE STATE OF ILLINOIS, IN ERROR.

PLAINTIFF'S POINTS

I.

In our first Point we say—That the Court erred in overruling the application and motion of Myers for a change of venue—for which error the judgment in this case should be reversed. See article 13, sections 9 and 12 of the Constitution of the State of Illinois; Session Laws of 1853, page 150, section 10; Session Laws of 1855, page 147, sections 1 and 2; 2d vol. Purple's Statutes, page 1186, section 5; 15th Ill., page 511; 9th Bac. Abr. 250.

II.

We say in our second point—That the Court erred in admitting Carpenter as a witness to give evidence against the prisoner—Carpenter being an approver. Having been accessory to the larceny after the fact, the statute constitutes him a principal felon. See Scates' Compl., p. 377, sec. 17. A legal authorized definition of the word approver is—one who confesses a crime, and accuses another. See Webster's Dic.; 4th Blac. Com. 330; Cow. Rep. 707.

III.

In our third point we say—That the objection to the introduction of evidence against the prisoner of his and Carpenter stealing cows, killing and selling them, together with distinct and separate offences in no way connected with the charge set forth in the indictment was well taken and should have prevailed, and the overruling such objection and admitting such evidences was error, for which the judgment in this case should be reversed. See 2 Russ. on Crimes, 694, 695; 1st Phil. Ev. 166; Ros. Cr. Evid. 38, 57, 58, 59, 60; note (2) 207, 208; 2d Leach Pl. C. 708; 2d East. Pl. of the Crown, 519; 1 Greenl. Evid. 126, 127, 213; 4th Cow. Rep. 483, 492; 6 Hill 292; 19th Wend. 232.

IV.

We say in our 4th point—That the record in this case imports a statement of all the facts—and the facts are insufficient in judgment of law, to authorize a conviction—Hence a new trial should be granted to the prisoner. See 1st Scam. 414; 1 Gilman, 70; 2 Gilman. 540; 11th Ill., 142; 13th Ill.

V.

We say in our fifth point—That the Recorder's Court of the City of Chicago, was not vested with jurisdiction, power and authority to try this case. It can exercise its potency and power only in cases arising within the limits of the city of Chicago.

, GARRISON & ANDERSON,
Of Counsel Plff. in Error.

84
Supreme Court
F. W. Myers
vs
The People }

Pointe v.

Garrison & Anderson.

Filed May 28. 1866
L. Deland
Clerk

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the highest effect of the system, and it is a serious loss to England, 1850; 1851; 1852; 1853; 1854; 1855; 1856; 1857; 1858; 1859; 1860; 1861; 1862; 1863; 1864; 1865; 1866; 1867; 1868; 1869; 1870; 1871; 1872; 1873; 1874; 1875; 1876; 1877; 1878; 1879; 1880; 1881; 1882; 1883; 1884; 1885; 1886; 1887; 1888; 1889; 1890; 1891; 1892; 1893; 1894; 1895; 1896; 1897; 1898; 1899; 1900; 1901; 1902; 1903; 1904; 1905; 1906; 1907; 1908; 1909; 1910; 1911; 1912; 1913; 1914; 1915; 1916; 1917; 1918; 1919; 1920; 1921; 1922; 1923; 1924; 1925; 1926; 1927; 1928; 1929; 1930; 1931; 1932; 1933; 1934; 1935; 1936; 1937; 1938; 1939; 1940; 1941; 1942; 1943; 1944; 1945; 1946; 1947; 1948; 1949; 1950; 1951; 1952; 1953; 1954; 1955; 1956; 1957; 1958; 1959; 1960; 1961; 1962; 1963; 1964; 1965; 1966; 1967; 1968; 1969; 1970; 1971; 1972; 1973; 1974; 1975; 1976; 1977; 1978; 1979; 1980; 1981; 1982; 1983; 1984; 1985; 1986; 1987; 1988; 1989; 1990; 1991; 1992; 1993; 1994; 1995; 1996; 1997; 1998; 1999; 2000; 2001; 2002; 2003; 2004; 2005; 2006; 2007; 2008; 2009; 2010; 2011; 2012; 2013; 2014; 2015; 2016; 2017; 2018; 2019; 2020; 2021; 2022; 2023; 2024; 2025; 2026; 2027; 2028; 2029; 2030; 2031; 2032; 2033; 2034; 2035; 2036; 2037; 2038; 2039; 2040; 2041; 2042; 2043; 2044; 2045; 2046; 2047; 2048; 2049; 2050; 2051; 2052; 2053; 2054; 2055; 2056; 2057; 2058; 2059; 2060; 2061; 2062; 2063; 2064; 2065; 2066; 2067; 2068; 2069; 2070; 2071; 2072; 2073; 2074; 2075; 2076; 2077; 2078; 2079; 2080; 2081; 2082; 2083; 2084; 2085; 2086; 2087; 2088; 2089; 2090; 2091; 2092; 2093; 2094; 2095; 2096; 2097; 2098; 2099; 2100; 2101; 2102; 2103; 2104; 2105; 2106; 2107; 2108; 2109; 2110; 2111; 2112; 2113; 2114; 2115; 2116; 2117; 2118; 2119; 2120; 2121; 2122; 2123; 2124; 2125; 2126; 2127; 2128; 2129; 2130; 2131; 2132; 2133; 2134; 2135; 2136; 2137; 2138; 2139; 2140; 2141; 2142; 2143; 2144; 2145; 2146; 2147; 2148; 2149; 2150; 2151; 2152; 2153; 2154; 2155; 2156; 2157; 2158; 2159; 2160; 2161; 2162; 2163; 2164; 2165; 2166; 2167; 2168; 2169; 2170; 2171; 2172; 2173; 2174; 2175; 2176; 2177; 2178; 2179; 2180; 2181; 2182; 2183; 2184; 2185; 2186; 2187; 2188; 2189; 2190; 2191; 2192; 2193; 2194; 2195; 2196; 2197; 2198; 2199; 2200; 2201; 2202; 2203; 2204; 2205; 2206; 2207; 2208; 2209; 2210; 2211; 2212; 2213; 2214; 2215; 2216; 2217; 2218; 2219; 2220; 2221; 2222; 2223; 2224; 2225; 2226; 2227; 2228; 2229; 2230; 2231; 2232; 2233; 2234; 2235; 2236; 2237; 2238; 2239; 2240; 2241; 2242; 2243; 2244; 2245; 2246; 2247; 2248; 2249; 2250; 2251; 2252; 2253; 2254; 2255; 2256; 2257; 2258; 2259; 2260; 2261; 2262; 2263; 2264; 2265; 2266; 2267; 2268; 2269; 2270; 2271; 2272; 2273; 2274; 2275; 2276; 2277; 2278; 2279; 2280; 2281; 2282; 2283; 2284; 2285; 2286; 2287; 2288; 2289; 2290; 2291; 2292; 2293; 2294; 2295; 2296; 2297; 2298; 2299; 2300; 2301; 2302; 2303; 2304; 2305; 2306; 2307; 2308; 2309; 2310; 2311; 2312; 2313; 2314; 2315; 2316; 2317; 2318; 2319; 2320; 2321; 2322; 2323; 2324; 2325; 2326; 2327; 2328; 2329; 2330; 2331; 2332; 2333; 2334; 2335; 2336; 2337; 2338; 2339; 2340; 2341; 2342; 2343; 2344; 2345; 2346; 2347; 2348; 2349; 2350; 2351; 2352; 2353; 2354; 2355; 2356; 2357; 2358; 2359; 2360; 2361; 2362; 2363; 2364; 2365; 2366; 2367; 2368; 2369; 2370; 2371; 2372; 2373; 2374; 2375; 2376; 2377; 2378; 2379; 2380; 2381; 2382; 2383; 2384; 2385; 2386; 2387; 2388; 2389; 2390; 2391; 2392; 2393; 2394; 2395; 2396; 2397; 2398; 2399; 2400; 2401; 2402; 2403; 2404; 2405; 2406; 2407; 2408; 2409; 2410; 2411; 2412; 2413; 2414; 2415; 2416; 2417; 2418; 2419; 2420; 2421; 2422; 2423; 2424; 2425; 2426; 2427; 2428; 2429; 2430; 2431; 2432; 2433; 2434; 2435; 2436; 2437; 2438; 2439; 2440; 2441; 2442; 2443; 2444; 2445; 2446; 2447; 2448; 2449; 2450; 2451; 2452; 2453; 2454; 2455; 2456; 2457; 2458; 2459; 2460; 2461; 2462; 2463; 2464; 2465; 2466; 2467; 2468; 2469; 2470; 2471; 2472; 2473; 2474; 2475; 2476; 2477; 2478; 2479; 2480; 2481; 2482; 2483; 2484; 2485; 2486; 2487; 2488; 2489; 2490; 2491; 2492; 2493; 2494; 2495; 2496; 2497; 2498; 2499; 2500; 2501; 2502; 2503; 2504; 2505; 2506; 2507; 2508; 2509; 2510; 2511; 2512; 2513; 2514; 2515; 2516; 2517; 2518; 2519; 2520; 2521; 2522; 2523; 2524; 2525; 2526; 2527; 2528; 252

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S.¹⁸ Felker
wants these
abstracts. filed

Chicago April 18th 1860
L. Leland Esq.

You will please
file the abstracts in the case of
Myers vs People, and when I come down
I will settle all the costs for the
same. Mr Garrison is acting as
Counsel for me until I arrive
there which will be in a very few
days. I sent the costs for entering
the case which I suppose you
got, owing to business I have
neglected sending the abstracts
until now which I hope you will
file and oblige yours &c

Samuel B. Felker
/

SUPREME COURT OF ILLINOIS.

FREDERICK W. MYERS, IN ERROR,	}	PLAINTIFF'S POINTS
vs.		
THE STATE OF ILLINOIS, IN ERROR.		

I.

In our first Point we say—That the Court erred in overruling the application and motion of Myers for a change of venue—for which error the judgment in this case should be reversed. See article 13, sections 9 and 12 of the Constitution of the State of Illinois; Session Laws of 1853, page 150, section 10; Session Laws of 1855, page 147, sections 1 and 2; 2d vol. Purple's Statutes, page 1186, section 5; 15th Ill., page 511; 9th Bac. Abr. 250. *240*

II.

We say in our second point—That the Court erred in admitting Carpenter as a witness to give evidence against the prisoner—Carpenter being an approver. Having been accessory to the larceny after the fact, the statute constitutes him a principal felon. See Scates' Compl., p. 377, sec. 17. A legal authorized definition of the word approver is—one who confesses a crime, and accuses another. See Webster's Dic.; 4th Blac. Com. 330; *4* Cow. Rep. 707.

III.

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IV.

We say in our 4th point—That the record in this case imports a statement of all the facts—and the facts are insufficient in judgment of law, to authorize a conviction—Hence a new trial should be granted to the prisoner. See 1st Scam. 414; 1 Gilman, 70; 2 Gilman. 540; 11th Ill., 142; 13th Ill.

V.

We say in our fifth point—That the Recorder's Court of the City of Chicago, was not vested with jurisdiction, power and authority to try this case. It can exercise its potency and power only in cases arising within the limits of the city of Chicago.

~~XXXXXXXXXX~~ GARRISON & ANDERSON,
Of Counsel Plff. in Error.

~~18. 4~~
Supreme Court

H. W. Myers
vs
The People

County 10

Garrison & Andrews

Filed May 23, 1866
L. Deland
clerk

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

151-
I was before the Honorable Robert S
Wilson, Recorder of the City of Chicago, and presiding
Judge of the Recorders Court of said City at a Term
thereof, begun 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 third day of October
in the year of our Lord one thousand eight hundred
and fifty nine, and of the Independence of the United
States the eighty fourth.

Present. Hon. Robert S Wilson Recorder
of the City of Chicago
Charles Haven State's Attorney
John Gray Sheriff of Cook County
Attest John K. C. Forrest, Clerk of said Court,

The Sheriff returned into Court the Venue
facias formerly issued, by which it appears to the Court
that the following named persons were duly summoned
to appear this morning to serve as Grand Jurors at this
Term of Court, to wit:

George W Sage	S. Henderson	Frederick Tuttle
Joshua Bell	George R Roberts	Donald McPherson
R H Counties	Samuel Howard	W H Bigelow
John Boorman	H W Andress	B W Ransted
Charles Leib	David Rutter	P W Kelly

Daniel St. Clair

M. S. Meyer

E. H. Aiken

William James jr

Jacob Singer

David Runnion

George H. Eveleth

Isaac Sarnitt

Who upon being called answered to their names and gave their attendance at this Term, thereupon Samuel Board one of their number, was appointed Foreman of the said Grand Jury who were duly sworn in and charged by the Court, and thereupon retired to consider of their presentments.

And afterwards, to wit; on the tenth day of October in the year aforesaid, it being a regular Term day of the October Term of the Court aforesaid, the following proceedings were had among others and entered of record in said Court, which said proceedings were in the words and figures following to wit: The Grand Jury came into
 open Court and (among others) made the following presentment
 endorsed June 22^d to wit:
 The People of the State of Illinois

vs

Frederick W. Meyer, John Haslett & John Smith

} Larceny

which said Indictment was in the words and figures following to wit;

State of Illinois

City of Chicago

Cook County

} ss.

Of the October term of the Recorder's Court of the City of Chicago, in said State and County, in the year of our Lord one thousand eight hundred and fifty nine.

3. 1

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 Frederick W. Myers, John Haskett and John Smith late of said city on the tenth day of June in the year of our Lord one thousand eight hundred and fifty nine, in said City of Chicago in the County and State aforesaid, one small Mare of the value of One Hundred Dollars, one other Mare of the value of One Hundred Dollars.

the personal goods of John Mohr 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.

Carlos Haven State's Attorney

Endorsed

A True Bill

Samuel Board Foreman of the Grand Jury

Witnesses

John Mohr

C. P. Bradley

David Carpenter

Robert Gray

John Roedger

Wm. M. Douglass

Filed October 10th A. D. 1859

Jos. K. C. Forrest

Clerk

4th
=

And afterwards, to wit, on the same day of October in the year aforesaid, it being a regular Term day of the October Term of the Court aforesaid, the following proceedings were had among others and entered of Record in said Court, which said proceedings were in the words and figures following to wit.

2562

The People of the State of Illinois
vs
Frederick W. Myers imp. etc } Larceny

And the above Defendant having been furnished with a copy of his Indictment and a list of the Jurors and Witnesses and he now being here duly arraigned for Plea says that he is not guilty. Thereupon it is ordered by the Court that the prisoner be remanded.

And afterwards, to wit on the fourteenth day of October in the year aforesaid it being a regular Term day, of the Court aforesaid the following proceedings were had among others and entered of Record in said Court, which said proceedings were in the words and figures following to wit.

2562

The People of the State of Illinois
vs
Frederick W. Myers imp. etc } Larceny

This day comes the said defendant by his Counsel and moves, the Court for a change of venue. herein, which motion was overruled by the Court.

And now issue being joined it is ordered by the Court that a Jury come, thereupon comes a Jury of good

15th
2

and lawful men to wit:

F W Young	R Thompson	D Blakesley
L K Osborn	Sam. Johnson	Allen Clark
W Ward	William Baker	E. A. Webber
Jas. O'Connor	Jo. H. Weather	Wm. Thomas

who being duly empannelled and sworn and they hearing the testimony of witnesses arguments of Counsel and instructions of the Court, retire to consider of their Verdict and afterwards return and say, we of the Jury find the Defendant guilty. We find the value of the property stolen to be One Hundred Dollars and fix the Term of imprisonment at Seven years in the Penitentiary of this State.

Thereupon comes the said prisoner by his Counsel and moves the Court for a new Trial herein and in arrest of Judgment, and is thereupon ordered to be remanded.

And afterwards, to wit on the twenty seventh day of October in the year aforesaid it being a regular Term day of the October Term of the Court aforesaid, the following proceedings were had among others and entered of Record in said Court, which said proceedings were in the words and figures following to wit:

The People of the State of Illinois

vs

Frederick W. Myers impleto

Larceny

It is ordered by the Court that the motion for a new Trial and arrest of Judgment heretofore made herein be and the same is hereby overruled.

6th

Thereupon comes the said Defendant by his Counsel and moves the Court for a discharge from custody which motion was also overruled by the Court.

Thereupon Defendant's Counsel moves the Court to suspend sentence herein which motion was also overruled, and to which overruling ^{of the said motions} by the Court the Counsel for the Defendant then and there excepts.

And afterwards to wit, on the same day of October in the year aforesaid it being a regular Term day of the Court aforesaid, the following proceedings were had among others and entered of Record in said Court, which said proceedings were in the words and figures following to wit:

2364
The People of the State of Illinois
vs
Frederick W. Meyers in p^lcto } Larceny

This day comes the People by Carl W. Keown States Attorney, and the said defendant with his Counsel also comes and now neither he 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 Frederick W. Meyers 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 Penitentiary of this State at Joliet, and be delivered to the Warden

7th

or Keeper of said Penitentiary, and the said Warden or Keeper is hereby required and commanded to take the body of said defendant Frederick W. Myers and confine him in said Penitentiary in a safe and secure custody, for and during the term of seven years from and after the delivery hereof, 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 therefore.

86th

State of Illinois
Cook County } ss

Be it Remembered that on the tenth day of October in the year of our Lord one thousand eight hundred and fifty nine, in the Recorders Court of the City of Chicago in the County of Cook in the State of Illinois, came the Grand Jury of said Court and made the following presentment in the words and figures following to wit:

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

Of 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 fifty nine.

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 Fred W. Myers John Haslett and John Smith late of said City, on the tenth day of June in the year of our Lord, one thousand eight hundred and fifty nine, in said City of Chicago in the County of ~~Cook~~ and State aforesaid, One Sorrell Mare of the value of One hundred dollars, One Other Mare of the value of One hundred dollars, the personal

9th

goods of John Shook 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.

Carlos Haven State's Attorney.

Be it farther remembered that in said Court afterwards, to wit; on the tenth day of October in the year aforesaid the said Fred W. Myers by his Attorney William S. Hulker, gave the said State's attorney notice, that he the said Myers would make an application to the Honor R. S. Wilson Judge of the Recorders Court of the City of Chicago, for a Change of Venue.

Be it farther remembered, that afterwards, to wit; on the tenth day of October in the year aforesaid the said State's attorney arraigned the said Fred W. Myers upon said Indictment (The said John Harlett and John Smith not being in Custody) and the said Myers then and there pleaded to the said

Indictment, the plea of not guilty; and thereupon afterwards, to wit; on the fourteenth day of October in the year aforesaid in said Court came the said Fred W. Myers by his said Attorney and filed in said Court a petition accompanied by an affidavit praying a change of Venue, said petition and affidavit being in

10th the words and figures following, to wit:

State of Illinois
Cook County } ss

Fred W. Myers
ads

The People of the State of Illinois

In the Recorders Court of
the City of Chicago October
Term A.D. 1859.

Indictment - Larceny of One
Sorrell Mare, One Other Mare.

To The Recorders Court of the City of Chicago.

Your petitioner Fred W. Myers of the
City of Chicago in the County of Cook in said
State, Respectfully sheweth that he is the
defendant in the above entitled prosecution
which is now pending in the said Court and
that he your petitioner fears that he shall
not receive a fair and impartial trial in
said Court on account that the Judge of
said Court is prejudic^{ed}~~ed~~ against him, and
also because the minds of the people of the
said County of Cook and City of Chicago are
prejudic^{ed}~~ed~~ against him, and he therefore
prays this Honorable Court to grant to him
your petitioner a change of venue in said
cause according to Law, and he your
petitioner will ever pray &c

Fred W. Myers

State of Illinois
Cook County } ss

Fredrick W. Myers, the above
named petitioner and who is know to me to be

11th

the person who signed the said petition came before me ~~for~~ H. C. Forrest Clerk of the Recorders Court of the City of Chicago, on the 14th day of October A.D. 1859 and having heard the said petition read and being duly sworn by me, maketh oath and says that he knows the contents of the said petition so by him signed and that the said petition is true according to the best of his knowledge and belief.

Subscribed and sworn
to before me this 14th day
of October A.D. 1859

Fred W. Myers.

Jo^{se} H. C. Forrest Clerk.

and be^{it} further
remembered that on the said fourteenth
day of October in the year aforesaid in said Court
before the Hon^{ble} R. S. Wilson Judge thereof came
the said people of the said State by the said
State's Attorney, ^{as also} ~~and~~ the said ^{Fred W. Myers} and
said Attorney, and the said Myers by his said
Attorney then and there moved and requested
the said Judge R. S. Wilson to grant to the said
Myers a change of venue, said Motion ~~motioned~~
the said Judge then and there overruled, and
refused to grant the said change of venue,
prayed by the said Myers, to said ruling and
refusal of the said Court to grant the said
Change of venue the defendant by his said

12th

Attorney then and there expected.

And be it farther remembered, that then and there came a jury to try the issue joined between the said People of said State and the said Fred W. Myers, and the said people to prove their part of said issue called as a witness John Mohr, who being duly sworn in open Court upon his oath testified as follows, to wit: I lost a Mare in June 1858. She had a white spot on her hind left leg, just on the fetlock joint, and a little white spot near her hip, I live at Breeman about twenty eight miles from Chicago, the Mare that I lost was Sorrell. She used to come to the House and I fed her most every night, a man by the name of Shepard told me to go to Mr. Braethy so I came to Chicago, and one morning when I was going to Breakfast I saw ^{her} the Mare in Backuses stable, she stood in the stable door, I then went and told Braethy, and we went to Squire Millikins and I took out a warrant for my mare, William Douglas went and got her, it was on the eighth or ~~10~~ tenth of August 1858. Backuses stable is on the corner of Taylor & Clark Streets, I value the mare at one hundred dollars, the leg that was white had been colored redish, that is my Mare I have seen her since in Duttons stable back of Braethys office, she is there now

13th

the leg is white, the spot that was colored is now white.

Cross examination,

The Mare that I lost was a sorrell, I lost her in June, she run on the praries in the Town of Breemen about twenty eight miles from Chicago, she had a white spot on her left hind leg and a white spot on her hip, I never lent her to any one, nor sold her. ~~the person~~ I do not know Myers, I never saw him around my place,

The said people then called as a witness C. P. Bradley who being duly sworn in open Court upon his oath testified as follows, to wit: David Carpenter gave me information as to Myers, I furnished Carpenter with some hair dye, I had been informed that a sorrell mare had been stolen, I knew where the mare was, I told Mohr that I thought that we had better wait a little.

Cross examination? I do not know any thing except I furnished David Carpenter some hair dye and that when I lifted up the Mares leg and examined it, the roots of the hair was white, To the testimony of the said Bradley on direct examination the defendant objected, the objection overruled by the Court and the defendant then ended there excepted. And the said people to prove their

14th

part of the said issue farther, called as a witness David Carpenter, who being duly sworn in open Court, upon his oath testified as follows, to wit: I went to Myers's House on the fourth day of July 1859, one night the heat troubled me and I got up, I saw Myers and Haslett mount their Horses and start to run a Cow down, Myers borrowed my hat I started out to see what they was doing, went after them half a mile where they had dismounted, after they left I found they had tied the Cow to the fence, I lived with Myers three or four weeks, Haslett boarded with Myers, Smith lived at Breeman, Myers and his wife once started to visit Smith at Breeman Smith stopped with Myers when he came to the City, I had no interview with anyone but Myers in regard to stealing Cows, Myers and myself stole a Cow and Haslett ^{Myers and myself rode when we got to Perkins stable} took her to Backus's stable, Backus said that he would not receive the Cow from Myers, so I led her into the stable and delivered her to him myself, I saw a Horse at Myers's place in his stable when I first went there, Myers spoke to me about paint I furnished some hair dye, Myers said that he had received a letter from Breeman and that he had to make way with the mare, he traded her to Backus, I did not

15th

hear him make the trade with Backus, I do not know how the trade was made. Gray a police officer asked me where the mare was about a week or ten days before Myers was arrested. I told him that she was in Myers's Barn, Myers told me that there was a Chattel Mortgage on the mare and that he wanted to disguise her, I brought an ox to Myers's place one night - I awoke him and told him that I had stole it, he came out and considered it all right - I done it by order of Brady, Haslett and Smith had the mare before Myers had her, and they all told me that Myers bought the mare of Haslett, Myers and myself stole Cows together and killed them and brought them into the city and sold them, the ox I got of Sherman, and the money was furnished by Brady, this ox was killed at Myers's stable and sold I tied the ox in the woods and told Myers that I had stole it.

Cross examination. I went to Myers's first - at the toll gate, some time afterwards I come to the City and met Robert Gray he told me to go to Brady, I went there and Brady sent me out to watch Myers, I saw Haslett and Smith drive and use the mare before Myers

16th

had her, Haslett and myself took the mare and another Horse one night and came into the City to a sparring exhibition, we put the Horses up in Beckhurs Stable, I was drunk that night. I fell off of the Horse, I was drunk some of the time that I was at Myers, sometimes I played off and was not drunk, Myers asked me to come and board with him, he did not charge me any thing for board he asked me to come and board with him before I went there the second time, I was there the night of the arrest of Myers, I come up with the officers at the time they made the arrest, I went on ahead of them to see if Myers was at the toll gate, I went over the fence and told them all right, they went in and made the arrest, I started to run one of the officers followed me I turned around with a pop bottle as if I was a going to spot him and the officers went back, Bennett brought me a Buffalo Robe and I laid down and waited awhile until the officers went away, then I went into the old toll gate House and slept until morning, then I came into the City, Brady told me to go right in with them, he furnished the hair dye, Myers Haslett and myself stole cattle brought the Beef to the City and sold it

17th

I sold one quarter to Backus, I was employed by Brady all of the time and acted under his directions Haslett and Smith had the Mare first and used her in this City, then Myers had her and used her in this City, I was paid by Mr Brady. To the introduction of the said David Carpenter as a witness the defendant ~~then and there objected~~ objected objection overruled by the Court and the defendant then and there excepted. To the testimony of the said Carpenter the defendant then and there objected, objection overruled by the Court and the defendant then and there excepted.

Here then ^{said} people rested.

And the said defendant to prove his part of the said issue then called as a witness Cornelius G. Backus. who being duly sworn in open Court, upon his oath testified as follows, to wit: I keep a Livery Stable on the corner of Taylor and Clark Street, I have fourteen Horses to let, Smith and Haslett used to stop ^{to} at my stable and put up the Mare before I saw Myers have her, afterwards Myers used to come and put her in my stable at noontimes, Haslett offered to sell the Mare to me, Afterwards when Myers had her, Haslett told me that Myers had bought

10th the Mare of him,
Cross examination, Did you ever receive a Cow from
Myers, There was a Cow left at my ^{place} ~~stable~~ in
my absence, I do not know who left her there
I did not receive a Cow from Myers, in
a few days I turned her out, I do not know
what became of her, I cannot say just when
she was turned out, To the question, and
testimony of the said Backus on cross
examination the defendant then and
there objected, objection overruled by the
Court and the defendant then and there
excepted.

and the defendant then called as a witness
William Bennett, who being duly sworn in
open Court upon his oath testified as
follows, to wit; I know Myers, John Haslett
told me that he owned the Mare himself,
and offered to sell her to me, I saw him
drive and use her a long time before Myers
had her, I was not present when Myers
bought the Mare, but Haslett told me
that Myers had bought her of him, and
Myers told me so too.

Cross examination.

I was present when Myers was arrested, I heard
some one whistle after the officers went away
I knew it was Carpenter and I went and carried
him a Buffalo Robe for I thought it was cold

1915

to lay on the ground, I do not know any thing about a Bow or Bows, I gave Carpenter fifty Cents to go away with, he told me the officers were after him. This was immediately after the arrest of Myers, I went and got tickets for Carpenter so that he could go and stay with his Brother at Hankakee for he said ~~that~~ the officers was after him. To the testimony of the said Bennett on Cross examination the defendant then and there objected, objection overruled by the Court, and the defendant then and there excepted.

and the defendant to prove his part of the said issue farther, called as a witness John ^{Vezghy} who being duly sworn in ^{upon his oath} open Court, testified as follows, to wit: I am a Blacksmith, Haslett brought the Mare to my shop to have her shod and Carpenter come and got her, that was a long time before Myers was arrested, it was about the first of July, A.D. 1858, Haslett then offered to sell her to me.

Cross examination.

I know Haslett call him Jack, I do not know Myers, I think it was in July when Haslett brought the Mare to my shop.

20th

The defendant then called as a witness,

Mr. Houser who being duly sworn in open Court upon his Oath testified as follows, to wit; I am acquainted with the general Character of the defendant amongst his neighbors, it is very good.

Cross examined.

He rents a House of me, I have heard folks talk against him.

The defendant then called as a witness Cyrus Heller a County Constable who being duly sworn in open Court, upon his oath testified as follows, to wit; I know Myers, I am acquainted with his general Character, it is good, he is a respectable honest hard working man.

Cross examined.

I think that I told Brady once that Myers had a bad Character or something to that effect, I don't know now.

Here the defendant rested.

And the said People called as a witness Charles C. Smith who being duly sworn in open Court upon his oath testified as follows, to wit; I know Fred Myers the defendant he has been in the penitentiary in New York State for stealing, he applied to me to get on the police, I told him that I had got a letter from New York stating that he had been in the

21st

penitentiary in New York State, he denied it at first, but afterwards owned it. To the testimony of the said Smith the defendant objected, objection overruled by the Court and the defendant then and there excepted.

Here the said People rested.

And the said defendant introduced his own affidavit wherein he swore that, he never was in the penitentiary Bridwell or lock up.

Here the defendant rested.

And the said People recalled Charles E. Smith who swore as follows, the affidavit was made by Myers to get on the police in this City, I was on the police then, and Myers then told me that he had been in the penitentiary. To the testimony of the said Smith after he was recalled by the People the defendant then and there objected. objection overruled by the Court and the defendant then and there excepted.

The above is all of the evidence given on the trial of said cause, both on the part of the said People and the said defendant.

And be it further remembered, that the said defendant by his said Attorney then and there reduced to writing the following instructions, to wit;

1st-
2^{3d}-

If the Jury believe from the evidence that the defendant received the ^{horse} ~~horse~~ in question, from Smith or Haslett without any knowledge that it was stolen, the fact of ~~the~~ ~~defendant~~ the defendant selling her to Beckus avails nothing.

2^d

If there is no reasonable doubt as to the guilt of the defendant, the Jury are bound to acquit the defendant.

3^d

The circumstances proved must to a moral certainty actually exclude every other hypothesis but that of guilt.

4th

If the Jury can explain the acts of the prisoner consistent with his innocence they are bound to acquit him.

And requested the said Judge to so charge the Jury, which the said Judge then and there did.

And after hearing the arguments of the respective Counsell, both for the People and the defendant, the said Jury retired to consider upon their verdict, and after being absent a short time returned into Court with the following verdict, to wit:
We the Jury in this cause find the defendant guilty, find the value of the property at one hundred dollars, and fix his time of imprisonment at seven years in the State penitentiary.

D. B. Blakely foreman.

23^d

and thereupon then and there the said defendant by his said Attorney entered a motion in arrest of judgement, on the following grounds, to wit;

1st

If the people prove a Crime, they proved it to have been committed in the town of Bremen in Cook County. But not within the limits of the City of Chicago in said State of Illinois, That the Recorders Court of the City of Chicago has Jurisdiction only within said City limits the Indictment in this cause sets forth that it was found by the "grand Jurors chosen, selected and sworn in and for the City of Chicago, in the County of Cook and State of Illinois" ~~That~~ said Grand Jury can only enquire of Crimes committed within said City limits.

2^d

That the Indictment was absolutely void, being found by a grand jury that had no lawful power to find the same. Said ^{said Judge} motion was then and there overruled by the ^{to said ruling and decision of said Judge} the defendant ^{by his said attorney} then and there excepted.

And thereupon then and there the said defendant by his said Attorney entered a motion for a new trial, said motion being in the words and figures following, to wit;

State of Illinois)
Cook County

The People of the State of Illinois

24th

Fred W Myers

Recorders Court of the City of
Chicago October Term A.D. 1858.
Indictment Larceny of One Sorrell
Mare, One other Mare.

Now comes the defendant Fred W. Myers and
by his Counsell W. S. Felker moves the Court
to set aside the verdict of the jury in said cause
and to grant to the defendant a new trial
for the following reasons

1st

The Court erred in allowing David Carpenter
an approver in said cause to give evidence
against the defendant on the trial of the defendant,
1st Bouviers Law Dictionary page 120.

2^d

The Court erred in allowing the said ^{David} Carpenter
a witness called on behalf of the prosecution
to give evidence tending to prove that the
defendant was or had been guilty of another
distinct offence to wit; Stealing Cows.
Roscoe's Criminal Evidence page 81.

3^d

The Court allowed the prosecution to give
evidence of particular acts of the defendant
tending to prove the general bad Character of the
defendant, after having ^{expressly} ruled that the evidence
was incompetent

4th

25th

The defendant brought himself within the requisitions of the statute authorizing changes of venue - it was the duty of the Court to enquire into all of the circumstances of the case, and to have satisfied himself whether the People of Cook County were prejudic^{ed} against the defendant, and to have caused the defendant to show why he believed that the Court was prejudic^{ed} against him as he alleged in his petition and affidavits for a change of venue, otherwise acting in the exercise of a sound discretion to have changed the venue - 15 Illinois Reports page 536.

5th

The Court erred in excluding evidence offered on the part of the defendant,

6th

The Court also erred in overruling the defendant's objections made in the progress of the trial

7th

The verdict of the jury in said cause is contrary to the evidence, and not warranted thereby.

8th

The verdict is contrary to Law.

W. S. Felker

Defendants Counsel,

The said motion for a new trial was then and there overruled by the said Judge, to said ruling the said defendant by his said Attorney

then and there excepted.

26th

And be it farther remembered that afterwards, to wit; that on the twenty seventh day of October in the year aforesaid in said Court the said defendant by his said Attorney entered a motion to be discharged - said motion being in the words and figures following, to wit;

State of Illinois }
Cook County } ss

The People of the State of Illinois

vs

Fred W. Myers

Recorders Court of the City
of Chicago October Term A.D. 1859
Indictment Larceny of Horses
More One other More

Now Comes the ~~said~~ defendant Fred W. Myers and by his Counsell W. S. Felker moves the Court to discharge the said defendant from Custody for the following reasons

1st That at the October Term of said Court A.D. 1859 the States Attorney Carlos Haven requested that the said Fred W. Myers be brought into said Court and put upon the witness stand to testify against Cornelius G. Backus who was then on trial upon an Indictment charging the said Backus George Sampson and William Bennett with receiving stolen property from the said Fred W. Myers John Haslett and John Smith knowing the same to have been stolen

* against the said Cornelius D. Matthews and the said Fred W. Myers did then and there freely, fully and fairly testify against the said Matthews

27th

(The said Sampson and Bennett not being arraigned) it being the ^{identical} property which the said Myers was at the said Term of said Recorders Court of the City of Chicago - convicted of stealing, and with the consent and by order of the said Court the said Myers was brought into said Court and put upon the witness stand to testify ~~and after~~ by reason of the said Myers having so testified and the promise of the Government to the said Myers that if he, ^{the said Myers} did so testify he should not be proceeded against farther, he is entitled to be discharged from custody and to go hence without delay.

W. S. Felker Defendants Attorney.

The said Motion for the discharge of the defendant, the Court overruled, to said ruling and refusal of said Judge the said defendant by his said Attorney then and there excepted.

And prayed an appeal to the Supreme Court of the ^{said} State of Illinois, and tenders this his Bill of exceptions and requests ^{the Court} to seal the same pursuant to the provisions of the Statute in such cases made and provided.

And thereupon the Judge of said Court at the ^{said} request of said defendant did sign and seal this Bill of exceptions on the twenty seventh day of October in the year of our Lord one thousand eight hundred

24th

and fifty nine.

R. J. Wilson
Recorder of the City of Chicago

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

J. Jos. H. C. Forrest, Clerk of the
Recorder's Court of the City of Chicago,

County and State aforesaid, do hereby certify, that the
above and foregoing is a true and complete Transcript
of the Record of said Court, as also of the Bill of Exceptions
in a case, wherein the People of the State of Illinois
were Plaintiffs and Fred. W. Myers Defendant

In witness whereof I have hereunto set
my hand and affixed the Seal of this
Court this 8th day of March A.D. 1860.

Jos. H. C. Forrest
Clerk



P.

Supreme Court
Frederick W. Myers

of April Term 1860

is
The People of the State of Illinois } And now comes
the said Peff in Error
by J. M. Helmer & Co. vs. the Court for reversal of the said
And says in Record Indictment Cor. & other proceedings
& judgments in they case there is manifest error
& says said judgment is in all things reversed
and says the following as error

Points of error as made.

- 1st The Court erred in not changing the venue.
- 2^d The Court erred in overruling the defendants objections made in the progress of the trial.
- 3^d The Court erred in allowing David Carpenter to testify in said cause.
- 4th Court erred in allowing the prosecutor to give evidence of particular acts of the defendant tending to prove a general bad character.
- 5th The Court erred in allowing the States Attorney to give evidence of ~~another~~ distinct offences other than charged in the indictment.
- 6th The Court erred in not arresting the judgment.
- 7th The Court erred in overruling the defendants motion for a new trial. ^{+ the grounds stated} The verdict is contrary to the law & evidence. ^{Verdict & judgment should have been for Duff - no evidence against} to warrant a conviction.
- 8th Court erred in taking jurisdiction of the cause no proof of larceny by Duff within the city limits - or any other element of the crime or of being accessory to the dealing.
- 9th The Court erred in overruling the defendants motion to be discharged.
- 10th The Court erred in trying the cause. ^{was appearing of record} Samuel S. Barker ~~Att~~ Atty for Plff in error.

State of Illinois } 3rd Grand Session
Supreme Court }

April Term 1866

And now come said
people & say that there is no
error nor manner of error
in said Record or proceedings
wherefore &c

Wm. B. Smith

States atty-

O

⁴¹⁷⁶
Frederick W. Myers
J
The People State of Ill.
Record & Enos

Filed April 7, 1860
L. Kel and Clerk

SUPREME COURT,

STATE OF ILLINOIS,

APRIL TERM, A. D. 1860.

FREDERICK W. MYERS,

PLAINTIFF IN ERROR,

VS.

THE PEOPLE OF THE STATE OF ILLINOIS,

DEFENDANTS IN ERROR.

ABSTRACT.

2 Indictment filed October 10th, A. D. 1859, in the October Term, A.
3 D. 1859, of the Recorder's Court of the City of Chicago—contains two
counts for larceny.

3 "That Frederick W. Myers, John Haslett and John Smith, late of
said City, on the 10th day of June, in the year of our Lord one thousand
eight hundred and fifty nine, in said City of Chicago, in the County and
State aforesaid, one Sorrel Mare, of the value of one hundred dollars,
one other Mare, of the value of one hundred dollars, the personal goods
of John Mohr, then and there being found, did then and there felonious-
ly steal, take, and carry away, contrary to the statute," &c.

4 To this Indictment, on the 10th day of October, A. D. 1859, Plain-
tiff in Error, in proper person, plead not guilty.

9 On the 10th day of October, A. D. 1859, in said Recorder's Court,
the Plaintiff in Error gave Carlos Haven, State's Attorney, notice that
he should make an application to said Recorder of said Court, for a
change of venue in said cause.

9 Plaintiff in Error, on the 14th day of October, A. D. 1859, filed in
10 said Court his petition, accompanied by his affidavit, praying for a change

of venue. And on said 14th day of October, in the year aforesaid, presented the said petition, accompanied by said affidavit, to R. S. Wilson, Recorder of said Recorder's Court of said City, and moved and requested said Recorder to change the venue in said cause. Said petition showed that Plaintiff in Error feared and believed that said Recorder was prejudiced against him, and also the inhabitants of said City of Chicago and Cook County were prejudiced against him, and also that he feared, on account of said prejudice, that he could not have and receive a fair and impartial trial before said Recorder, in said Recorder's Court of said City, in said Cook County. Said Recorder overruled said motion, and refused to grant a change of venue in said cause. Plaintiff in Error excepted.

12 Then a Jury was called, who were empaneled to try the cause, and the following evidence was given, and no other :

12 *Evidence.*—The People proved by their first witness, John Mohr, that he lost a mare in June, A. D. 1859 ; that she had a white spot on her hind left leg, just on the fetlock joint, and a little white spot near her hip ; that he lived at Bremen, about twenty-eight miles from Chicago ; that the mare he lost was a sorrel. She used to come to the house, and I fed her most every night. A man by the name of Shepard told me to go to Mr. Bradley. So I come to Chicago, and one morning when I was going to breakfast, I saw her, the mare, in Backus's stable. She stood in the stable door. I then went and told Bradley, and we went to Squire Milliken's, and I took out a warrant for my mare. William Douglass went and got her ; it was on the 8th or 10th of August, A. D. 1859. Backus's stable is on the corner of Taylor and Clark streets. I value the mare at one hundred dollars. The leg that was white had been colored redish. That is my mare. I have seen her since in Dutton's stable, back of Bradley's office. She is there now. The leg is white ; the spot that was colored in now white.

13 On Cross-Examination, he said : that the mare I lost was a sorrel.
14 I lost her in June. She run on the prairies in the town of Bremen, about twenty-eight miles from Chicago. She had a white spot on her left hind leg, and a white spot on her hip. I never lent her to any one, nor sold her. I do not know Myers. I never saw him around my place.

14 C. P. Bradley said : David Carpenter gave me information as to Myers. I furnished Carpenter with some hair dye. I had been informed that a sorrel mare had been stolen. I knew where the mare was. I told Mohr that I thought that we had better wait a little.

On Cross-Examination, said : I do not know anything except I furnished David Carpenter some hair dye, and that when I lifted up the mare's leg, and examined it, the roots of the hair was white.

14 To the testimony of the said Bradley, on direct examination, the
15 Defendant objected ; objection overruled, and the Defendant excepts.

David Carpenter said : I went to Myers's house on the 4th day of July, 1859 ; one night the heat troubled me, and I got up ; I saw Myers and Haslett mount their horses and start to run a cow down. Myers borrowed my hat. I started out to see what they were doing ; went after them half a mile, where they had dismounted ; after they left I found they had tied a cow to the fence. I lived with Myers three or four weeks. Haslett boarded with Myers. Smith lived at Bremen. Myers and his wife once started to visit Smith at Bremen. Smith stopped with Myers when he came to the City. I had no interview with any one but Myers in regard to stealing cows. Myers and myself stole a cow, and Haslett took her to Backus's stable. Myers and myself rode ; when we got to Backus's stable, Backus said that he would not receive the cow from Myers ; so I led her into the stable and delivered her to him myself. I saw a horse at Myers's place, in his stable, when I first went there. Myers spoke to me about paint ; I furnished some hair dye. Myers said that he had received a letter from Bremen, and that he had to make way with the mare ; he traded her to Backus. I did not hear him make the trade with Backus. I do not know how the trade was made. Gray, a police officer, asked me where the mare was, about a week or ten days before Myers was arrested. I told him that she was in Myers's barn. Myers told me that there was a chattel mortgage on the mare, and that he wanted to disguise her. I brought an ox to Myers's place one night. I awoke him and told him that I had stole it ; he came out and considered it all right. I done it by order of Bradley. Haslett and Smith had the mare before Myers had her, and they all told me that Myers bought the mare of Haslett.

Myers and myself stole cows together, killed them, and brought them into the City and sold them ; the ox I got of Sherman and the money was furnished by Bradley ; this ox was killed at Myers's stable and sold ; I tied the ox in the woods, and told Myers that I had stole it.

15 On Cross-Examination, said : I went to Myers's first, at the toll-
16 gate. Some time afterwards I came to the City and met Robert Gray ;
15 he told me to go to Bradley ; I went there, and Bradley sent me out to
16 watch Myers. I saw Haslett and Smith drive and use the mare long before Myers had her. Haslett and myself took the mare and another horse one night, and come into the City to a sparring exhibition ; we put the horses up in Backus's stable. I was drunk that night. I fell off of the horse. I was drunk some of the time that I was at Myres's. Sometimes I played off, and was not drunk. Myers asked me to come and board with him. He did not ask me any thing for board. He asked me

to come and board with him before I went there the second time. I was there the night of the arrest of Myers. I came up with the officers at the time they made the arrest. I went on ahead of them to see if Myers was at the toll-gate. I went over the fence and told them all right; they went in and made the arrest. I started to run; one of the officers followed me; I turned around with a pop bottle, as if I was a going to spot him, and the officer went back. Bennett brought me a buffalo robe, and I laid
16 down and waited a while until the officers went away; then I went into
17 the old toll-gate house and slept until morning; then I came into the City. Bradley told me to go right in with them; he furnished the hair
16 dye. Myers, Haslett and myself stole cattle, brought the beef to the
17 City, and sold it. I sold one quarter to Backus. I was employed by Bradley all of the time, and acted under his directions. Haslett and Smith had the mare first, and used her in this City. Then Myers had her and used her in this City. I was paid by Mr. Bradley.

To the introduction of the said David Carpenter, as a witness, the Defendant below objected; objection overruled, and the said Defendant excepted.

To the testimony of the said Carpenter, the said Defendant objected; objection overruled, and the Defendant excepted.

Here the People rested.

The Defendant proved by his first witness, Cornelius F. Backus,
18 that he kept a livery stable, on the corner of Clark and Taylor streets. I have fourteen horses to let. Smith and Haslett used to stop to my
18 stable, and put up the mare before I saw Myers have her. Afterwards, Myers used to come and put her in my stable at noon times. Haslett offered to sell the mare to me. Afterwards, when Myers had her, Haslett told me that Myers had bought the mare of him.

Cross-Examination. Question—Did you ever receive a cow from Myers? There was a cow left at my place in my absence. I do not know who left her there. I did not receive a cow from Myers. In a few days I turned her out. I do not know what became of her. I cannot say just when she was turned out.

To the question, "Did you ever receive a cow from Myers?" put by the State's Attorney, the defendant objected; objection overruled, and defendant excepted.

To the testimony of Backus on cross-examination, the defendant objected; objection overruled, and defendant excepted.

18 William Bennett said: I know Myers, the defendant. John Has-

18 lett told me that he owned the mare himself, and offered to sell her to
19 me. I saw him drive and use her in this city a long time before Myers
had her. I was not present when Myers bought the mare, but Haslett
told me that Myers had bought the mare of him, and Myers told me
so, too.

On cross-examination, said: I was present when Myers was arrested. I heard some one whistle after the officers went away. I knew it was Carpenter, and I went and carried him a buffalo robe, for I thought it was cold to lay on the ground. I do not know anything about a cow or cows. I gave Carpenter fifty cents to go away with. He told me that the officers were after him. This was immediately after the arrest of Myers. I went and got tickets for Carpenter, so that he could go and stay with his brother at Kankakee, for he said the officers was after him.

19 To Bennett's testimony on cross-examination, the defendant objected; objection overruled, and defendant excepted.

John Vaughn said: I am a blacksmith. Haslett brought the mare to my shop to have her shod, and Carpenter come and got her; that was a long time before Myers was arrested. It was about the first of July, A. D. 1859. Haslett then offered to sell her to me.

Cross-examination. I know Haslett; call him Jack. I do not know Myers. I think it was in July when Haslett brought the mare to my shop.

20 Mr. Houser said: I am acquainted with the general character of the defendant, Myers; amongst his neighbors it is very good.

Cross-Examined. He rents a house of me. I have heard folks talk against him.

Cyrus Keeller, County Constable, said: I know Myers, the defendant. I am well acquainted with his general character; it is good; he is a respectable, honest, hard-working man.

Cross-Examination. I think that I told Bradley once that Myers had a bad character, or something to that effect, I do not know now.

Here the defendant rested.

21 Said People called as a witness Charles E. Smith, who testified as follows: I know Fred Myers, the defendant; he has been in the penitentiary in New York State, for stealing. He applied to me to get on the police. I told him I had got a letter from New York, stating that

he had been in the penitentiary in New York State; he denied it at first, but afterwards owned it.

To the testimony of Charles E. Smith, defendant objected; objection overruled, and defendant excepted.

Here the People again rested.

Defendant then introduced his own affidavit, wherein he swore that he never was in the penitentiary, bridewell or lock-up.

Here the defendant rested.

21 The People then recalled Charles E. Smith, who said that the affidavit was made by Myers to get on the police in this city. I was on the police then, and Myers told me that he had been in the penitentiary.

21 To the testimony of Smith, after he was recalled by the People, the defendant objected; objection overruled, and the defendant excepted.

22 Evidence closed.

Certificate of the above being all of the testimony, and correct.

DEFENDANT'S INSTRUCTIONS.

Defendant asked the Court to instruct the jury as follows:

1st. If the jury believe from the evidence that the defendant received the mare in question from Haslett or Smith, without any knowledge that it was stolen, the fact of the defendant selling her to Backus avails nothing.

2d. If there is a reasonable doubt as to the guilt of the defendant, the jury are bound to acquit the defendant.

3d. The circumstances proved must to a moral certainty, actually exclude every other hypothesis but that of guilt.

4th. If the jury can explain the acts of the prisoner consistent with his innocence, they are bound to acquit him.

22 Court gave all of defendant's instructions.

People gave no instructions.

The jury retired, and after being absent a short time, returned into court with the following verdict: We, the jury in this cause, find the

defendant guilty; find the value of the property at one hundred dollars, and fix the term of defendant's imprisonment at seven years in the penitentiary of this State.

Defendant's counsel moved an arrest of judgment. Motion, in writing, assigned the following:

23 1st. That if the People proved a crime, they proved it to have been committed beyond the jurisdiction of the Recorder's Court. That the Grand Jury of said Court could not enquire of crimes committed outside of the limits of the City of Chicago.

2d. That the Grand Jury of the Recorder's Court of said City had no lawful power to find the indictment.

Motion in arrest of judgment overruled, and the defendant excepted.

Defendant's counsel moved for a new trial. Motion, in writing, assigned the following:

24 1st. The Court allowed David Carpenter, an approver, to give
25 evidence against the defendant.

2d. The Court erred in allowing David Carpenter to give evidence tending to prove that defendant had been guilty of another distinct offence, to wit: stealing cows.

3d. The Court erred in allowing the prosecution to introduce evidence of particular acts of the defendant, tending to prove the general bad character of the defendant.

24 4th. The defendant brought himself within the requisitions of the
25 statute authorising changes of venue; it was the duty of the Court to inquire into all of the circumstances of the case, and to have satisfied himself whether the People of Cook County and the City of Chicago were prejudiced against the defendant, and to have caused the defendant to show why he believed that the Court was prejudiced against him, as he alleged in his petition and affidavit praying for a change of venue, otherwise acting in the exercise of a sound discretion to have changed the venue.

5th. The Court erred in overruling the defendant's objections made in the progress of the trial.

6th. The verdict of the jury is contrary to the evidence and not warranted thereby.

7th. The verdict is contrary to law.

26 Motion for new trial overruled, and defendant excepted.

. Defendant's counsel moved the Court to discharge the defendant. Motion, in writing, assigned the following:

26 That at the request of the State's attorney, Carlos Haven, and by order of the Court, the defendant was put upon the witness stand to testify against Cornelius F. Backus, who was then on trial upon an indictment charging him with receiving stolen goods from the defendant, and others, knowing the same to have been stolen. That the Government promised Myers that if he did so testify against the said Backus, that he, Myers, should not be proceeded against any farther. That he did so testify, and is entitled to be discharged and to go hence without day.

Motion for defendant's discharge overruled, and defendant excepted.

SENTENCE.

6 That Frederick W. Myers, the defendant, be taken from the bar of the Court to the jail of Cook County, and in ten days after the adjournment of this Court, to the penitentiary of this State, at Joliet, and there be confined at hard labor for seven years.

POINTS OF ERROR AS MADE.

- 1st. Court erred in not changing the venue.
- 2d. Court erred in overruling the defendant's objections made in the progress of the trial.
- 3d. Court erred in allowing David Carpenter to testify in said cause.
- 4th. Court erred in allowing the prosecutor, Carlos Haven, to introduce evidence of particular acts of the defendant, tending to prove a general bad character.
- 5th. Court erred in allowing the prosecution to give evidence of another distinct offence, other than charged in the indictment.
- 6th. Court erred in not arresting the judgment.
- 7th. Court erred in overruling motion for new trial.
- 8th. Court erred in taking jurisdiction of the cause.
- 9th. Court erred in overruling defendant's motion to be discharged.
- 10th. Court erred in trying the cause.

S. M. & W. S. FELKER,
Att'ys for Plaintiff in Error.

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STATE OF ILLINOIS.

SUPREME COURT,
April Term, 1860.

FREDERICK W. MYERS,

Plaintiff in Error,

vs.

The PEOPLE of the STATE of ILLINOIS,

Defendants in Error.

Abstract for Plaintiff in Error.

S. M. & W. FELKER,

Att'ys for Plaintiff in Error.

Filed May 28, 1861
L. Deland
Clerk

Myers
vs
People

Abstract