

12143

No. _____

Supreme Court of Illinois

Maton, et al,

vs.

People



Records Court of the City of Chicago

State of Illinois
County of Cook
City of Chicago } ss

Read before the Honorable
Robert S Wilson Recorder of the City of Chicago and
presiding Judge of the Records Court of said City
at a Term thereof began and held at the Court House
in said City County and State aforesaid on the
first Monday of, it being Sixth day of March
in the year of our Lord One thousand Eight
hundred and fifty four and of the Independence
of the United States the Seventy Eighth
Present

Honorable Robert S Wilson Recorder

Samuel M. Shry State Attorney

Cyrus P. Bradley Sheriff of Cook Co

Attest

Philip W. Payne

Clk

And now to wit on the day and year last aforesaid
it being one of the said days of said Term of Court
the following proceedings were had and entered of
Record in said Court in the words and figures
following to wit:

The Sheriff of Cook County returned
into Court the venire issued by order of the Common
Council of the City of Chicago according to the
provisions of the act creating said Court aforesaid

a Grand Jury created by summoning the following
named persons viz John S Newhouse E B Kingsley
H E Miller S Ketchum W A Mills S H
Atkin William Turner George Sauermann Joseph
Racock W W Saltonstall Washington Smith
William Justice S E Throop Henry Tutty
John Rogers Edmund Bell and Stiles Burton
who upon being called answered to their names
as follows John S Newhouse E B Kingsley
H E Miller S Ketchum W A Mills George
Sauermann Joseph Racock W W Saltonstall
Washington Smith William Justice S E
Throop John Rogers and Edmund Bell and
gave their attendance at this term

Whereupon for good and
sufficient cause shown to the Court S H Atkin
William Turner Henry Tutty and Stiles Burton
were excused from further attendance at this
term

Thereupon It was ordered by the Court that
a special venire issue to the Sheriff commanding
him to summon nine good and lawful men
to complete the panel of the Grand Jury, returnable
instantly which was duly returned into Court executed
by summoning the following named persons who upon
being called answered to their names as follows
viz S W Pendry Asa Stone Martin W
Ford Samuel Cole John Casey Thomas Hill

Daniel Martin S F Noble and Jonathan H
Ford

Whom together with John S Hartman C
B Kingsley H E Miller S Kellerting W H Mills
George Sauerimann Joseph Peacock W W Satten-
dale Washington Smith William Justice S
J Throop John Rogers and Edmund Hill gave
their attendance at this term of Court and were duly
sworn in as a Grand Jury in and for the body
of the City of Chicago, and the Court having
appointed John Rogers Foreman of the said
Grand Jury and they having received the Charge of
the Court retired to consider of their presentments

Be it remembered that afterwards to wit on the fourteenth
day of March in the year last aforesaid it being one
of the days of the aforesaid term of Court The Grand
Jury Chosen selected and sworn in and for the body
of the City of Chicago for the said Term of Court Came
into open Court and made the following presentment
endorsed a true bill which proceedings were read and
entered of Record in the words and figures following to
wit:

State of Illinois }
City of Chicago } ss
Cook County } Of the March Term of the
Recorder Court of the City of Chicago in said
State and County in the year of our Lord
One thousand Eight hundred and fifty four
The Grand Jurors Chosen selected and

doom 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 William Morrissey
alias W. C. Morrison, Martin Brooks alias
Charles Brooks, Eugene Lamar alias Edmund de
Lemier, John Peterson, and Edmund J. Martin
late of said City on the Twenty Eighth day of
February in the year of our Lord One thousand
Eight hundred and fifty four in the City of Chicago
in the County and State aforesaid in and upon
me David Berry in the presence of the said People
then and there being did then and there feloniously
by and violently make an assault and two pieces
of current gold coin called Sovereigns of the value
of Four dollars and eighty four cents each one
piece of gold coin called a half Sovereign of the
value of Two dollars and forty two cents one
Watch of the value of Twenty Dollars, one chain
of the value of Two dollars, Seven Bank Bills
for the payment of one dollar each and of the
value of one dollar each one Certificate of Deposit
for the payment of One thousand dollars and of
the value to the owner of one thousand dollars
from the person and against the will of him
the said David Berry, the personal goods,
of him the said David Berry then and there

being found did then and there feloniously forcibly
and violently rob steal take and carry away
Contrary to the Statute and against the peace and
dignity of the same People of the State of Illinois

David McSherry

State Attorney

which said indictment was endorsed in the words and figures
following to wit "Plen No 298 Recorder's Court of the City of Chicago"
March Term 1854 The People of the State of Illinois vs W Morney et al
Indictment for Robbery, against Eric John Rogers Fireman of the
Grand Jury, Witnesses David Berry L Deely J Delaney L Nichols
W B Rogers, R Sheldon C P Bradley James Donohue James Ross
J W Bennett George Osborne Miss Pottinger Casper Lewis Filed March
17th 1854 J A Heynd Clerk

And afterwards to wit on the Twentieth day of March in
the year last aforesaid it being one of the days of said
Term of Court the following proceedings were had and
entered of Record in the above entitled Cause. in the words
and figures following to wit

The People of the State of Illinois
Eugene Lamar alias Edward de Lemer Indictment for Robbery
William Morney alias W C Morrison
Martin Brooks alias Charles Brooks
impleaded with John J Peterson and Edward J Mason

And now at this day
comes the said defendants by Messrs Haven and
Thompson their Counsel and moves the Court for
reason shown to quash the indictment in this Cause
and the Court having heard the arguments of Counsel

them order that the said Motion be overruled to which overruling by the Court the said defendants by their said Counsel excepts

And now again comes the said defendants by their Counsel aforesaid and moves the Court for a separate trial for the said defendants herein and the Court having heard arguments of Counsel thereon

It is ordered by the Court that the said Motion be overruled, to which overruling by the Court the said defendants by their Counsel excepts

And now on the day and year last aforesaid it being of said Term of Court the following proceedings were had and entered of Record in the above Cause which proceedings are in the words and figures following to wit

The People of the State of Illinois

Indictment for Robbery

John T. Peterson impeached with
Eugene Lamar alias Edward de Lamar
William Morrissey alias W. C. Morrison
Martin Brooks alias Charley Brooks
and Edward J. Mason And now at this day comes
the said defendant by J. G. Horne his Counsel and moves the
Court to quash the Indictment as relates to the defendants
Peterson, Whereupon It is ordered by the Court that the
said Motion be overruled

And now to wit on the day and year last aforesaid
it being one of the days of said Term of Court, the following
proceedings were had, which are in the words and figures
following to wit

77 The People of the State of Illinois vs Edward J Matson
impleaded into William Morrissey alias
M C Morrison. Eugene Lamar alias Ind. tment
Edward de Lennier Martin Brooks alias for Robbery
Charles Brooks and John F Peterson

And now at this
day comes the said defendant Edward J Matson by
Arthur W Wendett his Counsel and moves the Court
on affidavit filed that the venue of this Cause be changed &
and the Court having heard arguments of Counsel thereon
orders that the Same be overruled to which overruling by
the Court the said defendant by his Counsel aforesaid excepts

And now again comes the said defendant by his
Counsel and moves the Court for a separate trial for
the said Matson, and the Court having heard the
arguments of Counsel thereon, orders that the Same
be overruled to which overruling by the Court the said
defendant by his Counsel excepts

And now to wit on the day and year last
aforesaid it being of the said Term of Court aforesaid
The following proceedings were had in the words and
figures following to wit

77 The People of the State of Illinois
vs
William Morrissey alias M C Morrison Indict for Robbery
Eugene Lamar alias Edward de Lennier

Martin Brooks alias Charles Brooks,
Edward J. Watson and John Peterson And now at
this day comes the said People by Daniel M. Shoy
the State Attorney, and the said several defendants
as well in their own proper persons as by their several
Counsel also come, and they being furnished with
copies of of their Indictment and a list of the Jurors
and Witnesses, and they being duly arraigned and
forthwith demanded of and Concerning the crime alleged
against them in their said indictment how they
would acquit themselves for pleas in this behalf, severally
say they are not guilty in the manner and form as
they are charged in their Indictment and of this they
put themselves upon the Country and the people
as the law is

And issue being joined thereupon It is
ordered by the Court that a Jury come thereupon come
the Jurors of a Jury of good and lawful men to
wit

J. B. Batchelder Elijah Moore W. Platon
H. Edwards William Blair James Blannin
Charles Douglas Hongo Hamlin M. O. Jennings
A. A. Heald Andrew Schatz and J.
Whitcomb who being duly elected tried and
sworn well and truly to try the issue joined between the
parties according to law and the evidence 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 after a part of the testimony on the part of the
prosecution It is ordered by the Court that the further
hearing of this Cause be postponed until the coming on
of the Court tomorrow morning. It is also ordered
by the Court that the defendants be committed to the
Custody of the Sheriff

And afterwards to wit on the Twenty first day of March in the year last aforesaid it being one of the days of said Term of Court the following proceedings were had in the words and figures following to wit

The People of the State of Illinois

Indictment for Robbery

77

William Morrissey alias W C Morrison
Eugene Lamar alias Edmund de Lamar
Martin Brooks alias Charley Brooks
John F Peterson and Edmund J Mason

And now at this day again come the said People by Daniel M^r Shoy the States Attorney, and the said defendants as well in their own proper persons by their Counsel also severally come and the Jurors aforesaid also come, and they hearing further testimony on the part of the prosecution, as well as the testimony on the part of the defendants, the arguments of Counsel and instructions of the Court being in charge of a sworn officer of the Court to consider of their verdict, and afterwards come into Court and say We of the Jury find the defendants guilty of Larceny in the manner and form as they are charged in the Indictment, we find the

value of the property to be Forty Nine Dollars and Eighty five cents and we fix the term of Imprisonment of Edward J. Matson at Two years and Six Months.

We fix the term of Imprisonment of John S. Peterson at Two years and Six Months, we fix the term of Imprisonment of Eugene Lamar alias Edward de Lamar at Two years and Six months, We fix the term of Imprisonment of William Morrissey alias W C Morrison at one year and we fix the term of Imprisonment of Martin Brooks alias Charley Brooks at one year in the Penitentiary of this State at Alton

And now comes the said defendant, by their respective counsel and move the Court for a new trial herein in this Cause

Thereupon It is ordered by the Court that the prisoners be remanded And afterwards to sit on the twenty third day of March in the year last aforesaid it being one of the days of said March Term of Court. the following proceedings were had in the words and figures following to wit
The People v

Indictment for Robbery

Eugene Lamar alias Edward de Lamar

William Morrissey alias W C Morrison

Martin Brooks alias Charley Brooks

John S. Peterson and Edward J. Matson And now again comes the said People by Daniel M. Shoy the States

Attorney and the said several defendants as well
in their own proper persons as by their several Counsel
also come, and the Court having fully advised himself
on the motions heretofore made for a new Trial in this case
orders that the same be overruled to which overruling by
the Court the said several defendants by their Counsel
excepts

And now neither the said several defendants
nor their Counsel for them saying anything further why
the sentence of the Court should not now be pronounced
against them severally on the verdict of Guilty heretofore
rendered in this cause

It is therefore Ordered and adjudged
by the Court that the said defendant Eugene Laman
alias Edward de Lemier 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 fifteen days from and after the adjournment of this
Court to the Penitentiary of this State at Alton and
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 the said Eugene Laman
alias Edward de Lemier and confine him in said
Penitentiary in safe and secure Custody at hard
labor for and during the term of Two years and
Six Months from and after the delivery hereof

It is also ordered and adjudged by the
Court that the said defendant William
Morrey alias W C Morrison 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 fifteen days from
and after the adjournment of this Court to the Peniten-
tiary of this State at Alton and he delivered to the
Warden or Keeper of said Penitentiary and the said
Warden or Keeper of said Penitentiary is hereby required
and commanded to take the Body of the said
defendant William Morris alias W C Morrison
and confine him in said Penitentiary in safe
and secure custody at hard labor for and during
the term of One year ~~at hard labor~~ from and after
the delivery hereof

It is also ordered and adjudged by
the Court that the said defendant Martin
Brooks alias Chauncy Brooks 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 fifteen days from and after the
adjournment of this Court to the Penitentiary of this
State at Alton and he delivered to the Warden or
Keeper of said Penitentiary and the said Warden or
Keeper of said Penitentiary is hereby required and
commanded to take the body of the said defendant
Martin Brooks alias Chauncy Brooks and confine
him in said Penitentiary in safe and secure custody
at hard labor for and during the term of one
year from and after the delivery hereof

It is also ordered and adjudged

by the Court that the said defendant John
J Peterson 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
fifteen days from and after the adjournment of this Court
to the Penitentiary of this State at Alton and be
delivered to the Warden or Keeper of said Penitentiary
and the said Warden or Keeper of said Penitentiary
is hereby required and commanded to take the body of
the said defendant John J Peterson and confine him
in said Penitentiary in safe and secure custody
at hard labor for and during the term of Two years
and Six Months from and after the delivery hereof
and that he be thereafter discharged

It is also ordered and adjudged by the
Court that the said defendant Edward J Mason
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 fif-
teen days from and after the adjournment of this
Court to the Penitentiary of this State at Alton
and be delivered to the Warden or Keeper of said
Penitentiary and the said Warden or Keeper of
said Penitentiary is hereby required and commanded
to take the body of the said defendant Edward
J Mason and confine him in said Penitentiary
in safe and secure custody at hard labor for
and during the term of Two years and Six
Months from and after the delivery hereof and
that he be thereafter discharged

It is further Ordered by the Court that the
Said Defendants pay the Costs of this prosecution
and that the sheriff have execution therefor

Excerpt

Edward J. Watson. William Morrey
alias W. Morrison. Martin
Brooks alias Charley Brooks
Cyprian Lamar alias Edward
Desmarie impleaded with
John T. Peterson

In the Recorder's Court of
the City of Chicago

Hon. R. S. Wilson
Presiding

ad
The People of the State vs.) Indictment for Robbery

Be it remembered that on the 20th day of March 1857
and at the said Term of the said Court the said defen-
dant Watson by Windett his Attorney, defendants Morrey
Brooks and Lamar impleaded as above by Carlos
Haven & John A. Thompson Esqs their Counsel appeared
and first moved the Court to Quash the said Indictment
for the Reasons following to wit:

The said Indictment is bad for duplicity

1st In this viz. said Indictment in the same and only Count
thereof charges and sets forth two distinct and separate
offences viz. a Robbery and a Larceny to which offences
is applied by Statute of this State different and
distinct punishments

2^d The said Indictment does not set out
the crime of Robbery in the language of the Statute

3^d Said Indictment is ambiguous and un-
certain neither does it charge that the property men-
tioned therein was taken from the person of Berry
by means of force and intimidation or either of
them

4th Said Indictment in other respects is informal and void

Which said Motion to quash after argument of Counsel was overruled by the Court - To which decision the said defendants by their said Counsel then and there excepted

The said defendants then being arraigned, severally pleaded not guilty to the said Indictment and then and there by their said Counsel moved the Court for separate Trials on said Indictment for the reasons following to wit:

1st That said defendants are each entitled to peremptory Challenges of Ten Jurors and desire to exercise said right on the trial of said Indictment

2^d That the defense relied upon by these defendants is conflicting and inconsistent with the defense to be made by Peterson and Mathew

Which said Motion after argument of Counsel was overruled by the Court to which decision the said defendants by their said Counsel then and there excepted

Whereupon the Court proceeded to impanel a Jury to try all of the defendants together, J. P. Knott among others being called as a Juror was accepted by the Defendants Lathan Munnsey Worth and Mathew, but was challenged peremptorily

by Peterson and ordered to stand aside by the Court

To which order of the Court - setting aside the said Jurymen the defendants Murray LaMar Brooks and Mason objected on the ground that the said Jurymen had been selected by them and that Peterson could not depose them of said Jurymen but the Court overruled the objection and set aside the Juror

to which ruling the counsel for the said defendants then and there excepted

Alonzo Hamilton was called as a Juror and being duly sworn to true answers made &c stated that from the information and reports he had received and heard he had no doubt that a Robbery had been committed at the time in question, he recollected the newspaper statement of the affair but that he had formed no opinion as to the guilt or innocence of any of these defendants, did not know either of them, nor did he know that they were the persons mentioned in connection with the Robbery

The said Jurymen was challenged for cause by the above defendants, The Court ruled his answers to be no sufficient cause, and refused to set said Jurymen aside

To which ruling of the Court the said defendants then and there excepted said Jurymen was duly empanelled and sat

J R Allen was called as a Juror who

being sworn to true answers made & stated that he had read the reports of the robbery in question, and that if the report thereof was true he had formed his opinion of the guilt of the prisoners, if said reports were not true he had formed no opinion, he did not know whether they were true or false

The said Jurymen was challenged by the said defendants for cause the Court decided his statements to be no cause and refused to set aside the Verdict to which ruling of the Court the Counsel for said defendants then and there excepted

The Jury panel having been completed to Cause proceeded to trial; on the part of the prosecution the following witnesses were called sworn and testified as follows that is to say

David Berry. Said that he had been in town 3 weeks tomorrow, first arrived at Michigan Southern Railroad ^{freight} Depot, had there in a belt around his body between 200 & 220 Sovereigns and 1 half Sovereign, went to Boarding House on Clark Street came to R R Depot in company with a man from Toledo, we went to a Saloon opposite Matons and got a drink of Brandy, this was about 4 o'clock about 4 or 5 went to Matons to drink, knew no one there, thinks Peterson served him with two persons there then went and got shared, then went back to Depot and then met a man who came with me from Buffalo

then with this man in search of Galena Depot, took
a drink on West Side of Chicago River, when Buffalo
man left me, rambled around until I arrived at
the Post office, went into a Saloon near by, then
went to City Bank about 8 PM after dark, got
a Certificate of deposit for \$1000 had few foreigners
& small bills left, then intended my way back to
Rock Island Depot, was considerably intoxicated
then, had a Watch with Silver guard around my
neck, watch was in pocket of belt, after I got
Certificate of deposit the belt was around my body over
my vest, I had no consciousness of when I lost the
Money & Watch. Can swear nothing about them now
think I was drugged, don't recollect who caused
me to Watch House, found the next morning
my watch gone, the remaining Sovereigns and the half
Sovereign and the half Sovereign, was older than the
Sovereigns, saw my watch at Police office, saw 1/2
Sovereign, think was mine and some Sovereigns looked
like mine. Can't swear further.

Crossed by Hannu. I was conscious what passed
up to the time I was at the bank, I drank 3 or
3 times before, don't know the man's name from
Toledo he drank with me a little west of here
we were in pursuit of the Galena Depot, then I went
into a Saloon and got supper, I drank with this
man the first drink and the second I drank with
a man who came with me from Buffalo was
conscious, then was none of the persons with
me then.

Saloon when I had Supper was near Post-office
up to the time I went into the Bank none of the
defendants were into me I Can swear to nothing
after I left the Bank, was not conscious, think
I drank, Cant say when or who with, had penins
to that drank 3 or 4 times that afternoon

I dont state the liquor was drugged, think drug
was administered to me, dont know, dont know I
saw defendants until after I was at bank, dont know
who told me I was robbed in the morning, or
certain any one did. Did not see in the afternoon
the persons who put me in the Watch House
I told no one in City I had money, I did not
swear that the man who came from Buffalo into
me knew I had money, Belt was under my
clothes, until I went to the Bank then put it
on outside Took leave of the Man from Buffalo
on the West Side of the River

Crossed by Whidett Toledo man drank into
me first here and afterwards paid into the Change
Drank at Matons about 4 or 5 o'clock P.M.
only once and once opposite Matons, was more
persons in the Bank besides me and Clerk
Cant tell who, Peterson waited on me at Matons
I paid in change - I think

Crossed by Horke left Toledo with Toledo
man.

Quest-

Watch Shown Witness by Prosecution —
Says the Watch and Chain is the one I had
Watch with \$30 and Chain \$10, Bills I got
from Bank diminished to bills handed him. Gold
Coin half Sovereign & Sovereigns like those I had
half Sovereign date 1836 Sovereign 1850

I put the Small Bills and Draft in my pocket
Watch was in my vest Pocket under the belt Belt
in the morning same as I left it the night before
at the bank

James Ross called and sworn for People lives in
the Sherman Street and Berry was at my house about
latter part of February last saw him there twice
about time of Robbery he was in my house about
half past nine O'clock P.M. no one with him
asked me if I could keep him all night When
Berry first came in Matson was at my house
was about a quarter past nine. Berry stand
3/4 of an hour Matson went out after Berry
Shortly, Berry was intoxicated & sat by my stove
and vomited & was acquainted with Matson —

Berry came in again about 15 minutes after
he first went out, and Peterson and LaMar
came in after him, they came in after him. 6 or
10 minutes after he came in, Berry was then
there about half an hour. Lamar and Peterson
stand as long as he did. Lamar left first
Berry Lamar and Peterson left together. Peterson
testified — Berry would not drink — they

treated him twice, both asked him to drink
this was 6 or 8 minutes after 10 PM - the cars
were a few minutes behind time - I went out towards
Depot - they could not be more than 15 or 20 yards
when I went out and did not see them.

I gave Delaney information of these men. I had
no information of any ones being robbed then
one of the officers asked me if any such man as
Berry was at my house, I told them yes, and
who went away with him, Maton had told me
that Berry had money, said he saw Berry at
the Bank with two Sorengins, I told the officers
that he so told me, this information of Maton's
was why I told the officers

Crossed by Mindett - My place of business is about
20 Rods from Maton's - he has often been to my
house evenings and I have been to his house
Berry asked where am I now and Maton said I see
that old Corey at Bank with two Sorengins - and
perhaps he said this, said this about 9 PM - and
since he did not tell me some one else told him
Berry then had the belt putty around him - public-
ly - am not mistaken in Berry's Words - am sure
Berry first come about 1/4 past 9 PM - am confident -
I was waiting for the Cars - am positive that Maton
said he had seen him that afternoon in
Bank

Direct Maton left about the time Berry did

Crop ex^d by Mindett

Berry was gone 3 or 4 minutes before Maton left

Crop ex^d by Haven I did not swear at Police office that I had never before seen LaMar and could not identify him - LaMar wore black clothes - I am positive LaMar was there if put to it I did not in police office swear I was not positive he was there I know I swore I thought he was the man then I am not positive LaMar was there I think he is the man - have no doubt - I identify him in complexion and build, he then had mustaches on, has not now a few more was present when Berry was there at my place first in lounge in my room - Cant say but think LaMar had a cap on - paid no particular notice of dress Cant say what Peterson had on, either light or dark dress

Crop ex^d by Horke Berry was in room when LaMar was there and one or two others, LaMar left first Berry and then Peterson one step behind each other dont recollect any one drinking after they left

I know Peterson did not treat after Berry and LaMar went out, My wife was left in the Bar and a stranger or two was there, dont know whether Strangers drank or not -

Peterson said LaMar was a gentleman from New York a friend of his - appeared to be acquainted

Crop ex^d by Thompson I dont recollect Berry coming and drinking with the Toledo Man

that day in my house

Wm B Rogers for Perpet

I am in the State Bank
Saw Berry in our Bank between half past 8 and
9 Febuary 28. Berry came in office of Bank and
asked me if that was a Bank of deposit, he turned
away then. I saw him untwose a belt from his
body and lay it on the Counter, asked me if I had
Correspondence in Minnesota, said he was going there
to enter land. He did not count his money right
he counted \$1000 in gold. I gave him back \$8.80 cents
and Certificate of deposit for \$1000. I advised him
to take care of himself - he went out. The Bills I
gave him were some Merchants and Mechanics Bank
Springfield and a Bill on Farmers Bank. Bills
presented this is the money - I recognize this money
because we had the money near the bills, never been
handled - this for Stock Bill I know. I knew
this money when I saw it. I saw after I gave
Certificate three Sovereigns and a one dollar gold piece
the date of the Sovereigns took are 1853 except some
half dozen - this one presented is like them, there is
6 or 8 of 1842 very some - some of 1840

Covered by Whitett. Time Berry was there ^{between} half past
8 and 9 stand 15, 20, or 25 Minutes - I was alone
there with him - no one with him - I did not
see Maton there to our Bank that day - I was

near 9 PM when ^{Berry} ~~Heaton~~ left

Direct Persons outside could see all that went on

Crop^d by Haren Berry told me the persons who came with him think he spoke of a Lady - There are Victoria Sovereigns of the date of 1853 not uncommon - Can't be identified - very few Sovereigns of 1853 are so little worn as those I took or this you show

Direct this money is of such value as it bears on its face

James Bennett for People I drive Mail Wagon from Southern Depot - Saw Berry 27 or 28 or about that date in Wm Quackentush's, Saw him about 9 or soon after. between 2 Buildings We took him in Quackentush's, he was then sent in Koper & Sir Peterson and Lamar in Quackentush's, saw them pop the door once or twice - did not see Matin there

Crop^d by Haren, Saw these men after 9 o'clock PM, had see Lamar in Matin's a day or two before, drank there when he did - did not speak to him that evening I stood at Quackentush's from 9 until 10 PM Bar Tender James Mosher was there and three or 4 others sitting round First time Berry was there 10 minutes and got a glass of ale and could not drink it, he called for it, three or four drank with him a young man by the name of Leroy and

myself drank with him there. Last time Berry
was in there I saw a belt around him. Berry said
he would treat all in the house when he treated.
Heard he was robbed next morning. Last I saw
of Berry he was standing in front of Quackentushes
Cave of N. Horse. I saw Lamar and Peterson
pass Quackentushes door 2 or 3 times. Berry
had just gone out doors when they came in.
Cave of N. Mindett

Can't tell how Peterson was duped
George Astor Called for People

"Remember a night in February last
a man was reported to have been robbed. I saw
Berry in Quackentushes that night, he said some
one had been trying to rob him and could not
come it. And he would treat all in the house.
We drank and I soon after saw him near
the Depot. Then saw him by Quackentushes and
told him he had better get lodging as he had
been drinking, I advised him to go in Rope
and he went in there and I saw him no
more. While we were talking Maton came
up and told Berry he could give him lodging
for fifty cents. Maton went towards Rope. Maton
has nothing but a lounge in his place.

Cave of N. Mindett

Am a Boatman last 3 or
4 weeks have done nothing. I stay at-

Tractenbush was staying there that night
Maton came near us

Had nothing to do that night Berry came from
towards the Saloon called Ohio place. This was
west of the Depot. Knew Maton before - they is
right across from the Depot - Maton came up and
said I will give him lodging and breakfast for
40 50 The street is 10 feet from Roper Door

I did not state in Court below that they took
place in R & Depot Am certain it was Maton
that was not from Jan 10 PM

Capt R. H. Harn I was in Tractenbushs bar
Room that evening Berry was then asleep on the
Lounge and fell off and Mosher went and shook
him and told him he had better stir around and
wake up, Mosher Tractenbush James Bennett
and myself were there present at the time he fell
off Berry had been in when he got asleep
others were there Cant tell who except those I
named Berry treated the Company before he fell
asleep I noticed a belt around him heard
nothing except what I told him of his being
kicked Berry said I will treat all there
is in the house, they tried to rob me and couldnt
quite come it

Louise Portgeier Called and sworn for the
People I know Lamar Momey Brooks
and Maton last Feb Lamar lived on Buff-
alo street, I was in house with them a week
saw Maton there 4 times, he put a plate

handed to me: found some Silver Money
and some bottles, these are the ones - a small
Lantern - a pair of Nippers I picked - a bottle
pair I saw picked up some can been found
there: Saw some shoes like those shown the Counsel
for Matson LaMar Morrissey and Brooks objected
to the above testimony as to the articles found in
the house Court overruled objections Exception taken
arrested Matson and Peterson about 12 PM

after the other two were arrested and after Perry
had been found: Perry was found within 60
feet of the house when we arrested Morrissey and
Brooks Home of Matson was barred and
Peterson was in a bench and Matson was in lounge
Matson's wife then lived back of Matson's place
Searched Matson's place above and below
Capt Ex by Wadett Am police man and saw
Matson at his house about 10 o'clock last I
went to the House of Morrissey and Brooks
on Matson's suggestion

Capt Ex by Haren I found in house where
Morrissey and Brooks was one Sovereign 2
four dollar gold pieces, Delaney was with me
There was Silver money found then I found
same - by examination I found these bottles
of acid &c in a Bureau drawer (objected &
excepted to) I asked Brooks for the key
he said the Boy had it Morrissey was
lounging on the bed Delaney Hays Welch
were with me when we searched the house

I was sworn in Court below I found the 2
four dollar pieces on the Bed, the silver on the
Bureau The Sovereign was putted upon
the grate near the ashes

Cross^d by Madett In going from Maton's to
the House on Buffalo Street I met two men
I now think Peterson was one of them I
went against Peterson as I thought - this was between
11 and 12 P^M Not a very dark or light night -
never saw Peterson before that night I merely
supposed was Peterson as I supposed

Deict When I met Peterson he was coming West
towards Maton's -

Cross^d by Thompson Saw Brooks first and
asked him for a light to search and I took
a light from Stand I think he made no objection
he was arrested at this time

adjourned to 9 A^M the 2^d March
9 A^M March 21st Court

Convened &c

Patrick Delaney was called down on the
part of the people says I am a Watchman
about 28th July last - was called upon to
look after Mr Berry by Mr Rof I went and
got some more Watchmen and searched for
Berry, went to Maton's, he was there no
one else - about 10 P^M I then went
and got more Watchman and went on

Buffalo St to House on plate read O Lamar
Smaller! The Watchmen went in and after the
rest. There was 4 or 5 men of us, found in the
house North & Morrissey. Searched the House Seely
was out me - no one but Brooks & Morrissey then
found in the house. Except to under step. We found
then a box of nails and Port Monies. Spr Poppers
some more tools. Some crumshoes a large gunlet
Match Box. Things looking like the things presented
a piece of gold a Sovereign was picked up by
Seely & on the grate hearth - looked like this
(the one presented) parties were arrested before the gold
piece was found. During that evening I saw
Matson at his house after 10 PM. I saw
Berry lying on side Walk before we went to Lamar's
House, he was 40 or 50 feet from Lamar's Door
myself and another picked him up, he was
intoxicated. Could not speak, belt buckled
around him. he was lying across side Walk
he was taken to Watch house after I took him
to the Watch house went back to Buffalo Street
to Lamar's and searched there did not search
first time. No one but officers in house when
search was made. The House in Buffalo
Street in this City.

Cop of by Haren said found the articles
in Lamar's house. Saw these articles that
night. The trunk was broke open don't know
who broke it open. Can't say but all the articles
were in the trunk. Hays picked up the

Discovered on the hearth none of the defendants
than there 4 or 5 - then when we first went in of
Police officers I think Hays found some more
gold dont know how much - found in the upper
part of the house in a bed room I believe dont
know exactly - Hays showed it to me cant
say how much there was

Cross ex^d by Widdett Went to Matons to enquire
for his partner and Maton said his partner's name
was Peterson

Cross ex^d by Horkle Perrys Coat was worn so that
I saw the Belt

Stephen S Hays Called sworn for People

Says I heard about a man being robbed, went
to Matons House and Maton directed me to
Buffalo Street went to Lamars and asked for
Peterson and was answered no. Cant say who
answered thought Brooks heard others inside talking
then went to Depot then to Matons 20 minutes
after I left Lamars Maton and Lamars at
about as far apart as from here to Post office then
went to Lamars and found Brooks and
Morrisey then 4 others with me on going
back met 3 persons and recognized Peterson

We searched and found about \$15 Money
a gold coin on hearth - this looks like the
piece I found on hearth - these implements

found in trunk in back room found short
sword at Maton's We picked Berry up on
going to Lamar's House
Crop ex by Wendett

first. Went to Maton's about cant
day the third after 10 about that went to Eugene
about Peterson Maton was sitting in a chair
Maton directed me to Lamar's to find Peterson
Maton appeared Corb and directed me that Peterson
had gone off with his coat and would be found
at Lamar's I met Peterson and Peterson said
"told to them we have been playing Cards"

Crop ex by Horst Am certain that Peterson
recognizes his face - he was in liquor and made
a noise I might be deceived but am pretty
certain. Am not willing to swear it - think so
Two others were with Peterson

Crop ex by Haren

Went to Almas on Buffalo Street
after 9 first. Before that time I had received
information that Berry had been robbed by
John Welch - he told me on the corner of Van
Buren and Clark Street. Said he had been robbed
of about \$2000. It was about 9 PM when
I received this information I then went to the
Nick Southan Dept and met Mr Redfield
who told me Berry had been robbed I
then went to Maton's and then Welch and me
alone went to the House on Buffalo Street

did not see Berry up to that time I knocked
at the door and asked if Peterson had been there
they said no - Brooks came to front door
the 2^d time and asked me to come to back door
as they had lost the key.. first time I heard
voices and thought Peterson was there. then left, talking
was in front parlour heard talking before Brooks
came to door met the 3 persons coming back
2^d time on Van Buren St they were going west, we
last Before we went in the 3^d time to Lennars
we found Berry on Mack's Two watchmen were
carrying Berry they had just found Berry
Myself, DeLaney, Seely, Kepley and Welch I think
went in the back door Later Mr Lott Berry to
Watch House

Inside I waited about 5 minutes, then they offered
to show me around the house went up stairs and
found some coin up stairs, think I found about
\$15 up stairs of coin I took a little lamp to search
and Brooks told me to take a big lamp and
handed it to me I found pieces was found on the
bed by Mr Seely pieces \$4 and some cents I took
Brooks to the Watch House, Kepley took Moriney
I went back again with all the rest
we left Seely and DeLaney at the House when
I came to Watch House I was informed by
Redfield that a man had been robbed about
9 might be earlier or later I am and was

a watchman of the City Cars had just left when I heard this

Crop ex^d by Horko

I went to Lamar's first

Crop ex^d by Mindett

Maton told me the man had drawn one of the Bank's \$200 and he had got \$30 Maton appeared uneasy, this was when he told me when Peterson was I didn't tell Maton Berry had been robbed Maton said he had been to the Bank to draw \$30 and saw the old man have \$200

Direct When I went to Lamar's I didn't see Berry lying on the Wall's might have been there

Crop ex^d by Thompson

I did not look towards where Berry was first time I was there and did not see him might have been there and I not see him Casper Jones called and sworn for People a Watchman I arrested Mr Lamar in the alley between State and Wabash Aimee about 1/2 past 7 in the morning I was watching the House had been there about an hour La Mar came and saw me run through the alley when I caught him, no there in the night arrested no others Jeremiah Gordon for People was a Watchman the night of the Robbery went up 10 or 11 towards House on Buffalo Street He pursued after Lamar and Peterson and we met Peterson and Lamar between Clark and Buffalo St and between

Matson and Samson Hines, saw Peterson and
Lamar go into Matson's House between 11 & 12 P.M.
Peterson rapped at Matson's door. Matson asked who
was there, he said Peterson and was let in, they talked
together then I went back to the House and Samson
was not there then. We went to arrest Matson and
Peterson and Peterson took off his coat and said
that wasn't enough and after I had arrested him
said I'd better take care or he would put a
ball through me.

Crop ex^d by Hines. Never saw Lamar before that
night on the walk when they passed me and I followed.
I hid my club and these persons went into Matson's.
I stopped at Corner of Matson's House 20 minutes
a quarter then went into Matson's didn't find
Lamar in there. I took remark of his countenance
clothes & the night was a moonlight one. I
sworn before Police Court I was positive it was
Lamar. Judge by countenance and clothes never
saw Peterson before that night. Peterson rapped
at door. Lamar didn't speak. Lamar's coat
looked like the one he has on only he had a cloth
over it. Had no doubt 'twas Peterson. didn't
see him after I was watching the House.

Crop ex^d by Horst. Peterson had on a coat
like Matson's only a little brighter. No light in
Matson's. I knew Peterson by his countenance.

Crop of by Thompson

They Peterson and Samar stopped at
Door

C P Bradley

On the Morning of the 1st March went to
Search Maton's House found their Pocket Books & etc -
at Maton's Saloon in a straw bed I found
this Watch (Berry identified) turned straw out of
Tick and found these bills this room was occupied
by Maton

Went to Samars and found Chloroform in a
vat and piece of Iron

Crop of by Mandett Examined Maton's House
and Saloon the worn up stairs in Maton's Saloon
was a summer Room. - had looking looms
Secret Iron shown (obj. proof found in Samars
House the nippers are used to open doors, Wallets
found at Maton's House

Saw Morsey has 2 pair Noceaus on
when examined before Police office

James Donohue for Perple

I arrested none of debts I see Samar
on the Morning March 1st Saw Maton at Watch
House he gave me a Sovereign and a half
Sovereign these are the ones got them Feb May 28th
1. o'clock in the Morning. he was in the Watch
House

Crop of by Mandett

Am positive these are the Coins

have a private matter on them. He gave them to me voluntarily. I was saying nothing to him, nothing said by me to him. Watson was not in the cell. I did not up to then apprise him he was arrested. Don't recollect he asked me if he might go. Lucius Nichols called a sworn for the People

Bills Sherman's saw it first in Watson's House in old bed ticks on throwing out straw. (the watch and chain was taken by Bradley from same place)

At this stage upon Mr Wendett's objection to the testimony relative to Anna Carpet Bagg and saying if they were to be received in evidence "he would enquire if this was a Court of Justice" the Court censured Wendett of Contempt and fined him \$10 which was paid, and to said order of Court in enforcing said fine Wendett did then and there except.

Cross ex by Wendett

Went then to the House about 8 o'clock in morning these bills were rolled up, found these Carpet Bagg in same room when Bed Ticks was (14 Carpet Bagg taken from Watson) Watson has kept public House some time in this City.

Here the defendants La Mar Morrissey Brooks and Peterson and the prosecutors Watson and the Counsel for Watson La Mar Brooks and Morrissey requested the Court to exclude as evidence from

the Jury at articles two bottles &c which were found
in the house of Lamar which articles were not mentioned
in the said indictment nor admitted as the property of
Berry and to direct the jury to disallow all evidence
of such articles in determining the guilt or innocence of
the said defendants. The Court refused to exclude
such evidence and the defendants accepted. The Deft
Maton by his Counsel then moved the Court to charge the
Jury to exclude all Captains Pocket Books, Port
Monies and the Swords found in Maton's premises
not mentioned in said indictment and not taken from
said Berry from their consideration in determining
upon the question of the guilt of the said defendant
Maton and the Court so charged the Jury the
prosecuting Attorney agreeing to exclude the same.

The defendant Maton then called James
Miller who being sworn testified that on the evening
in question he saw Maton in his Saloon from $\frac{1}{2}$ past 7 to $\frac{1}{2}$ past 10 o'clock. Maton did not
leave during my stay.

Cross ex'd by Pros Atty. Prosecution here asked the
Witness if during the night in question he saw
Peterson or Lamar in the Saloon of Maton, to
which Counsel for Lamar & Peterson objected on the
ground that the case was rested as to them, the
objection was overruled & excepted to.

The witness answered that Peterson left the
Saloon about $\frac{1}{2}$ past 8.00 that evening and that
Lamar was in the Saloon in the course of
the evening.

Thomas Post & David Reber both testified that they
were in Matons that night from 9 o'clock to after 10 &
that Maton was there all the time.

Lorenzo D. Leiby was called by Maton testified
before in the case, went on the night in question
to enquire for a man and asked Maton, he
said he had not seen such a man went again at
12 P.M. arrested Maton and took him to the Watch
House, what transpired between Maton and the
officers led to the arrest of Morrissey and Brooks
and also led to the search of Matons House & La Mar's
this statement was objected to by Counsel for La Mar
Morrissey and Brooks. Court admitted it and defen-
dants excepted.

The defendant Maton has rested.
The Counsel for Lamar Morrissey and Brooks have
requested the Court to direct the Jury to disregard
the statements of the Defendant Maton made
in the absence of La Mar Morrissey and Brooks
informing their opinion as to their guilt or innocence.
The Court refused so to direct the Jury to
which the defendants excepted.

The foregoing is a full statement of all the testimony
given by all the witnesses upon the trial of said
defendants Maton Peterson Morrissey Lamar and
Brooks.

then the case ended

Whereupon the defendants Morrissey Broth & Samar among other things requested the Court to instruct the Jury that said defendants could not be found guilty of Larceny or of receiving stolen goods upon this indictment.

Which said instruction was refused by the Court to which refusal the said Counsel of the defendants then and there excepted

The Prosecuting attorney on behalf of the people then requested the Court to give the Jury the following instruction to wit

"The Robbery from the person as in other Complicated and aggravated Larcenies the prisoner may be acquitted of the fear or violence and found guilty of the larceny" which said instruction was given as above by the Court

To the giving of which instruction the said defendants by their Counsel then and there excepted

All the other instructions requested by the Counsel for the defendants and on file in the Case were given by the Court

The Court upon motion of Whiddett Counsel for Matron directed the Jury to disregard in their consideration of their verdict the Port Morris Pocket Books and Carpet Bags found in the house of Matron

And now the Jury having heard

the arguments of Counsel and the instructions of the Court in writing, retired to consider of their verdict and after having so considered for about one hour and one half returned into Court with a verdict as follows to wit: The Jury find the prisoners guilty of larceny and find the value of the property taken to be \$49⁸⁵ and for the term of imprisonment at 2 1/2 years for motion

2 1/2 "	Peterson	}
2 1/2 "	Lamar	
1 "	Brook,	
1 "	Morse	

upon the rendition of the said verdict the above named defendants by their said Counsel moved to arrest the Judgment of the Court upon the said verdict and for a new trial for the reasons following to wit:

1st The Court erred in not allowing the said defendants by Juries drawn and selected by them and not objected to by the People and in setting each Jury aside upon the motion and challenge of other defendants

2^d The Court erred in allowing the Carpet Bags Pocket Books and other things found at the Saloon and House of Mason and not in possession of these defendants to be produced before the Jury or made evidence in their cause

3. The Court erred in allowing property not mentioned in the indictment in this case and found on the premises of La Mar to be produced before the Jury and given in evidence in this case
- 4th The Court erred in not allowing these defendants a separate trial on their motion therefor
- 5th The Court erred in admitting evidence and testimony which was objected to by these defendants and by overruling said objections made by their Counsel
- 6th The Court erred in not excluding evidence relative to articles which had been found at La Mar's House and received in evidence on the trial when Counsel of these defendants made motion therefor
- 7 The Court erred upon each and every decision upon the questions of law raised by the Counsel for these defendants upon the trial of the said case and in the giving of the instruction of the Pros Atty and in the refusal of the instructions asked by these defendants before named, which said motion for a new trial the Court overruled and rendered judgment upon the verdict in favor of the people and against the defendants La Mar Morrissey and Brooks

To all of which proceedings opinions and rulings and the giving of the judgments aforesaid the said defendants La Mar Morrissey and Brooks by Carlos Hanea and John A Thompson their Counsel did then and there except and thereupon asked leave of said Court to file their Bill of Exceptions

And upon the rendition of said verdict the said
defendant Maton by Arthur W. Windett his
counsel moved the Court for a new trial upon the
grounds and reasons following to wit

- 1st That the Court erred in not allowing the said
defendant to be tried separately from the other defendants
upon the motion and application therefor
- 2^d That the said Court erred in not allowing said
defendant Maton to be tried by a Jury of his Peers
selected by the People and by himself,
- 3^d That the Court erred in allowing the introduction of
evidence to show what burglarious tools and implements
had been found in the house of LaMar not in the said
Maton's possession and not mentioned in the said
Indictment, and in allowing said tools and implements
to be exhibited to the Jury upon the trial of said
indictment
- 4th That the said Court erred in allowing the prosecution
to give evidence to the Jury of Post Monies Pocket-
Books Carpet Bags and valises found on Maton's
premises but not mentioned in said Indictment nor
claimed nor charged to have been taken from Berry
and as to which no evidence was given to show
that any crime had ever been committed and

and which articles for aught that appeared upon said Trial were the lawful property of the defendant Matson.

5- Because the said defendant Matson was embarrassed in making his defence to the Jury upon his said trial and because he suffered great and manifest injustice and hardship in being compelled to be tried with ^{plurals} other defendants and the said Court after hearing the arguments of A W Wendett Counsel for said Matson upon consideration had of the said Motion of the defendant Matson for a new trial the Court overruled the said Motion of the defendant Matson for a new trial and rendered Judgment upon the said verdict in favor of the people and against the said defendant -

And the said defendant Matson by A W Wendett his said Counsel did then and there except to the opinion and Judgment of the said Court in the premises above set out and prayed leave of the Court to file his bill of exceptions which was granted

And the said defendants by their said Counsel now pray the Court to allow sign and seal this their said Bill of exceptions which is accordingly done

R S Nelson
Recorder &c

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

I Philip A. Hayne
Clerk of the Recorder's Court of
the City of Chicago in the County and State
aforesaid do hereby Certify that the above and
foregoing Transcript is a true and correct
Copy of the Record and proceedings had in the
foregoing entitled Cause, as appears from the file
in my office.

Witness Philip A. Hayne Clerk of
said Court and the Seal thereof at
Chicago this first day of June
A.D. 1854

Philip A. Hayne
Clerk



And now comes the said Plaintiffs
in Error ~~James La May, William Manning & Martin Smith~~
Edward J. Mator, by their
W. Windett their Counsel, and says
that in the record and proceedings
afore said, there is manifest
error in this to-wit.

1 That the Court below erred in
refusing to grant a change
of venue to the said ^{Mator} Plaintiffs
upon his application by Petition
and Affidavit in support
thereof, therefore -

2 That the said Court erred in not
quashing the said Indictment upon
the Plaintiffs motion to quash.

3 That the Court erred in re-
fusing to grant the said
Plaintiffs in error a separate
trial to the said Plaintiffs upon
their motion therefore, and in
compelling them to be tried together
with all the other defendants
jointly indicted with the Plaintiffs
as afore said.

4.

The Court erred in not allowing the Plaintiff in error to be tried by a Jury selected by the Council for the People and by himself, but permitted other persons beside the Council for the People and the Plaintiff to challenge Jurors accepted by the Plaintiff, and not objected to by the People.

5.

That the Court erred in allowing evidence to be given by the Prosecution of sundry articles, Carpet bags, valises, port-manneries, found &c found on Matson's premises, not mentioned in said Indictment, nor shown to have been at all connected with the offence therein charged, nor shown to have been the fruits of any crime whatever & permitting said articles to be exhibited to the Jury.

6.

That the Court erred in allowing evidence to be given by the Prosecution of the quantity of articles found on the premises of the defendants below La Mor, Morin & Brooks, tools, the crowbars, picks, wrenches, and acids, not mentioned in said Indictment, nor shown to have been connected with the crime.

with the offence therein charged,
and permitting said entry
be shown to the jury -

7 That the Court erred in not
granting the Plaintiffs a new
trial and new trial as in their
motion therefor -

For which errors, and others
in said record manifest
the said plaintiffs pray
that the judgement of the court
may be reversed.

Arthur P. Windett
Plffs Counsel.

And the said people by Wallace
their attorney come and join the
errors herein, and say that there
is no error in the record of
the proceedings of said cause
and this they are ready to
verify by the record. Wherefore
they pray judgment

W H Wallace
for the people

Which said Motion is in the words and figures
following to wit;

State of Illinois
City of Chicago
Cook County

In the Recorder Court of
the City of Chicago.

March Term 1857

Edward J. Martin being first duly
sworn deposes and States that at the present term of
said Court he was jointly indicted together with William
Morrissey alias W. C. Morrison Martin Brooks alias
Charles Brooks Eugene Lamar alias Edward de Lamar
and John F. Peterson of a certain Charge of Robbery
This affiant States that he is wholly innocent of the
said Charge and was in no way concerned in or connected
with the Commission of the same This affiant States
that he fears and believes he will not have a fair
and impartial trial in said Court by reason that the
minds of the inhabitants of the said City are unjustly
and falsely biased and prejudiced against the affiant
This affiant States that the minds of the inhabitants of
said City were biased and prejudiced against this
affiant by reason of certain false and calumnious
statements and misrepresentations made in one of the
daily papers published in Chicago of great influence and
circulation in which it was said That on searching
Martin's House during Tuesday night, the officers found
concealed in a Bed about a dozen Carpet Bags
Several made of Cloth others of leather Some had been
undocked, while the balance had doubtless been reflexed
without the trouble of breaking the locks all bore the
appearance of having belonged to travellers, and thus
a probably an exhibit of what becomes of a portion
of the lost Baggage so often advertised, both

in the Papers and at the Police office. Your affiant solemnly
States to your Honor that no such thing as one single
lost Carpet Bag or anything of the kind whatsoever was
ever found by the Officers hidden or concealed in any
manner upon his premises. This affiant States
that the Carpet Bags spoken of in the Extract
above made from said Newspaper were some of them
the lawful property of himself and wife and that some
others had been left at his house when he kept a public
house for payment of Bills by Lodgers and boarders who
had no money to pay the same. That but one of
them was hidden or concealed but were kept in this
affiant's house just as anything else might be kept.
And that they all came into the possession of this
affiant in a lawful and proper manner and had
been kept and used by this affiant in a lawful
and proper manner and that such of said Carpet
Bags as he did not originally purchase for his
own use and that of his wife or were not left with
him by agreement for payment of bills by persons
who had staid at his house as travellers or boarders
unable to pay their bills had been left for many
months and some of them more than a year by
travellers who had staid at this affiant's house
and who had gone away without paying this affiant
what they owed him for board and lodging and that
this affiant had only opened such Carpet Bags a long
time after they had been left and when it was
proper and lawful that he as an Innkeeper

Should open the same, This affiant feels himself
greatly injured and aggrieved by reason of the publication
in said Newspaper of the said Calumnious and false
statements, the affiant believes that said publication
thereof has prejudiced the minds of the inhabitants of
said City against him and caused them to prejudice his
case. This affiant further states that there was no just
foundation or ground for such pernicious and false
representations of fact as above mentioned and that the
same was designed and calculated to cause it to be generally
and publicly believed by the inhabitants of said City that
the affiant had been in the practice of making depredations
upon travellers and others that he had been guilty of dows
larcenies and other crimes, that he was of a criminal and
bad character and that he is guilty of the charge brought
against him in the indictment all of which said state-
ments and misrepresentations so published in said News-
paper are utterly false and calumnious; This affiant
doth solemnly swear that the application for a change of
venue is not made to cause delay or hindrance to
the prosecution of said indictment, that it is the desire of
this affiant that his case may be speedily tried by a
Jury, when the above prejudices does not exist against
him. This affiant further solemnly states that he
feels that by reason of the premises he cannot be fairly
tried by a Jury from the inhabitants of said City and
that in his belief a fair and impartial trial and
justice require, that the venue of his cause be changed
which he prays may be accordingly done.
I sworn to and subscribed before me
this 14th day of March 1854
P A. Hynes Clerk

E. J. Watson

which said motion is in the records and papers belonging to said

In the Recorder Court of the City of Chicago

March Term 1837

State of Illinois

City of Chicago

County of Cook

(D) vs Edward J. Mathew who at the present Term
of said Court has been jointly indicted together with
William Morrey alias Mc Morrisin Mathew Brooks
alias Chauby Brooks Egan Lamar alias Edward de Lamar
and John F. Peterson upon four several indictments for
Larceny, being first duly sworn doth solemnly depose
and state that he is wholly innocent of the commission of
the said Larcenies if any such ever were committed
This Affiant further states that he is advised by his
Counsel that by the law of the land he is entitled upon
the trial of said Indictment to make ten peremptory
challenges of Jurors as is also each of the other said
defendants. That it is not expedient or safe for him
to join with the other defendants in their peremptory
challenges or in the defences which they will make upon
the trial of the said Indictments That the defence which
with the advice of Counsel the defendant will make upon
said trial of said Indictments will be a different defence
from that will be made by the other defendants as
here informed and believe That this affiant fully expects
that the evidence will show that if any such Larcenies
were ever committed the other defendants were guilty of
having committed the same and not this affiant
This affiant doth further state that a great prejudice
and bias of mind exists in the minds of the inhabitants
of said City against the said defendants and a
general belief that they are guilty of the several
Crimes charged against them in the said

Indubitably. The appellant states that for the reasons aforesaid he is advised by his Counsel and believes true that he cannot have a fair and impartial trial in this Court jointly together with the other defendants, that he therefore prays of this Court that he may be allowed to be tried separately and apart from the other defendants.

Given and Subscribed before
me this 13th March 1854

E J Matson

P A Hyman Clerk

The People

In the Recorder Court of the City
of Chicago

Edward J Matson William Morrissey

alias M O Morrison Martin Booth alias Chauncy Booth

Eugene Lamar alias Edward de Lamar and John J Peterson

The said Edward J Matson by Arthur W Wendt his Counsel
moves the Court to grant him a separate trial apart from the other
defendants jointly indicted with him for the grounds and reasons following
1st That the several defenses of the said defendants will proceed
upon different grounds, will be various from each other and will be
materially conflicting

2^d That the said defendants propose to sever in their
pleading challenges to the Jurors

3^d That a great prejudice exists in the minds of the People
against the other defendants and that a fair and impartial
trial can not be had by the appellant together with them
before the same Jury

Arthur W Wendt
for Matson

I Certify that the foregoing and annexed is
a true and correct copy of the affidavits and
motions on file in my office, and appertaining
to said Cause

Philip A. Hayes
Clerk Recorder Chgo Ill

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Edward J. Malm
et al.

v 995

The People.

Bill of exceptions.

185

Filed June 15. 1854.
V. Deland Clk.

12143

A. P. Winchell
of Counsel.

Matow
w
People

Error to Recorder court. Chicago

~~Change of venue. S. 1853 p. 150~~
~~R. S. 528 Sec 5. Venue.~~

Change of venue - By the R. S. p. 528. Sec 5 -
the circuit court has no discretion, when
the requisite application is made the statute
is imperative on the court to award the
change - But by the act of 1833
creating the Recorder court, a discretion
is given to the court. The language is
different "Changes of venue may be taken" &c
"the judge being satisfied of the truth of the
affidavit" &c Session Law 1853. p. 150. Sec 10.
- *Cass v. State*. 2. Iowa. 355-356.

as to right of separate trial. When two or
more are jointly indicted for the same
offence, they may be tried together or
separately in the discretion of the
court. 4 J. R. 298 - 6 Ohio 41. 1 Chitty
Cr. Law. ²⁶⁷ 270. ^{7. Cowen. 1140.} ³⁸³⁻³⁹⁸ They each have right to peremptory
challenges R. S. 185 - Sec. 184. (1 Peters C. C. R. 118
does not conflict. ^{nor does 1 Bald. 81} separate trial was allowed in
that case in the first instance. *Chambers case*
3 Salkeld 81. does not conflict. the common
law rule & by the statutes of many states allows
a given number of challenges to each party.
Our statute allows them to each person R. S.
185. Sec 184 -) ^{4. Plag. 137} ^{referred to by Wharton} ^{as a S. 156. 2}
4. *Mason* 158 - *Hawkins P. C.*
B. 2. Ch 41 § 9 - 2 Hale P. C. 268 - 7 S. R. 469 -
1 Blackford 431. 12 Wharton 480. (6 U. S.
Condensed R. ~~594~~ ^{side page 588} The exercise of
discretion by the circuit court will not be
reviewed in this court. 3. *Milw.* 368 - 644. 4. *Libb* 113. ¹²⁹

As to the admission of illegal evidence
the evidence of carpet bags &c found
in Matons house was expressly excluded
from the jury by the court. The evidence
of articles found in the house on
Buffalo St. occupied by the other
defts. did not prejudice Matons
& he cannot object to it because it
was illegal as to the other defts.
This deft. alone prosecutes this writ
of error.

The defts were well convicted of larceny
on this indictment - the instruction in that
behalf is law. 1 Russ. on Cr. 905. 2 East
P.C. c 16 s 167 p 784. Turners case / Seach 536.

Matore

as

People 90

—

Error to Records &c

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Brief

—

W. Wallace
for the People

Matin

The People

Removes upon
Mr Waller's cry -
- - -

Mr Waller said that the Judge ruled out the objectionable evidence as far as it related to Matin; and that on that account we cannot be heard to object to it further in this Court.

Now after the admission of this evidence to the Jury, the Plaintiff was entitled to have it ruled out absolutely, and the Jury was instructed in clear and unequivocal terms to lay it out of their consideration; that the effect which the bearing of it, its introduction must have had upon the Jury, should be entirely effaced from their minds. The Judge did not rule it out in this manner, nor did he so instruct the Jury. There is nothing to show that its effect upon their minds was effaced. The Judge did not rule it out in such a manner as would impress its unlawfulness upon the Jury, but rather, as being merely superfluous, and not needed by the prosecution, testifying in the presence of the Jury, and to them that the Prosecution could well spare such proof, there being a plenty besides to convict him. Then this evidence illegal and

urgent as it was, and this is frankly
admitted by Mr Wallace, after
being given and exhibited to the Jury
after having produced its effect upon
their minds, was only erroneously ruled
out; the injustice done by its admission
was not remedied or undone;
It is submitted to the Court, that Court below
was guilty of Error in the proceeding
in that respect.

Supposing a Man should seize some
delicate Child, and hold her over a
frightful Churn, he cannot by his strength &
firmness of muscle hold her in that
situation & danger in spite of her cries
and contumacious glories; and then
think to escape all responsibility by
putting her back where he found her.
But if permanent injury is done to the
sufferer, is he not responsible for it?
put or responsible as if he had killed
her or injured her with a blow?
Shall inferior Courts, never so fully she
entrusted with necessary discretionary
powers, be allowed in this way to interfere
with the mind of the person, to interfere
with the Prisoner's rights, to corrupt
the Law, and their duty under it?

12. Mr Wallou contends that the act creating
the Recorder's Court, makes it dis-
cretionary with the Recorder in
all cases to grant or refuse a
change of venue.
It is not clear that the act does any
such thing. That Constitution will
be adopted by this Court, which
is the milder one, and more
beneficial, and more consonant
to the general Law of the State.
Under the general Statute, the Court
has the same discretion as a
Common Law, to grant a change
of venue upon Motion. The Statute
enlarged the Prisoner's rights, it
made a Change of venue a matter
of Course and peremptory upon
Compliance by the Prisoner with the
Conditions of the act; still leaving it
with the Court to judge as to the Com-
pliance with the act. He contends
that the effect of the Act is the
creation in question creating the Recorder's
Court, only enlarges the number
of the conditions, the Compliance with.
Still leaving it with the Recorder
to judge as to the Compliance or non-
Compliance by the Prisoner with the
requirements of the act. But if
the Compliance with the Conditions of
the act be perfect, then the right to
have the venue changed is absolute. *

* If the Legislature intended to invest the Judge with an arbitrary discretion in the matter
why did they require the Pr. to comply with certain enumerated conditions.

We Contend for the Construction of the
Act upon principles of Law and
upon the Construction of it, we were
clearly deprived of a legal right.

If however the Court should adopt
a different Construction, we
contend that the Court erred
in the exercise of its discretion,
that it exercised its discretion
contrary to the rules and uniform
practice of Courts of Justice.
If the Recorder had a discretion,
that discretion was given him not
to be exercised in an arbitrary
or capricious manner, but for the
beneficial administration of
public Justice. That when a
proper case was made out,
and shown to the Court, and a
proper application made for
the exercise of it, powers then given
were given to be exercised in
such cases, and not to be refused,
and that the refusal in question was,
an act of disobedience to the Law,
and an abuse of its power.
We contend that this Court may review
the discretion of the Court below. Authority
abundantly sustains this position. It is
of absolute necessity, that this Court should
review the wrong exercise of discretionary
power by inferior Courts.

9 All Legal analogies confirm this view
of the Case. The Court in question im-
posed a duty upon the Court. But can
it be said that a duty is imposed
upon a man, when that man is given
an irresponsible, irresistible discretion
as to whether, & how ~~he~~ shall discharge
his duties - the release the wid. duty
implies a certain measure of
imperative obligation. duty flows from
imperative obligation, if it was the duty
of the Court to allow upon a full perusal
of the previous Condition, in such a Case or
to be bound to change of venue, then in
such a Case, the Prisoner was deprived
of a clear legal right in being
refused his Application. The duty
of the Court gave birth to a right
in the Prisoner.

By the Civil Law, if a bargain was made between
parties, that one should do so & so if he should
judge it reasonable, or just, the Law com-
pelled him to exercise his judgement according
to the reason reason and right of the Case;
and if he failed to do so, the other would
review the judgement in an action upon the
Contract itself; otherwise if the law were that he
should do so & so if he pleased, for then the Law did
not require a valid Contract - See Pothier on
Obligations, Part. II. We submit, that the Court was
bound to be satisfied of the truth of legal proof.
when it was intrinsically probable & reasonable,
and not contradicted or denied.

But further - It is undoubtedly a principle
of our Constitutional Law, that the Laws
enacted by our Legislature touching
the administration of public justice,
and affecting the rights of persons,
must be uniform, equal, and
general - If not equal, they are
unjust - if not uniform and general
they are not impartial - Not
arbitrary, and anti-republican.
And for these reasons, I contend,
that the Section of the act in question
is unconstitutional, if the Constitution
put upon it by Mr Wallace be the
right one.

III, Mr Wallace contends, that it is wholly
within the discretion of the Superior Court
to allow, or to refuse a repleat trial,
and that this Court can in no case,
review the exercise of that discretion.
It is the uniform practice of Courts, upon
application for a repleat trial properly
made, showing reasonable and
good cause, to grant it.

The Cases referred to show this, and
it is the uniform Course of the Courts
to grant such applications. Especially
when it is shown clearly that it is
essential to justice and a fair
trial that the trial should take
place before several Jurors -
In this Case no reason is exhibited
which rendered it im-

proper or unsafe that the trial should be separate. And it appears from the record that injustice was caused by the refusal.

The arguments and authorities which I adduced and cited to sustain in relation to the wrong exercise of discretionary power in refusing a change of venue, may be referred to, though not repeated in this connection. In this case every consideration excited which could in any case be adduced to the discretion of a court; if there ever was a case which appealed loudly to the court for a reversal of the judgment held by reason of the hardship and injustice of the trial, this is such a one.

2. I concluded that within certain restrictions, upon certain conditions, & subject to certain modification, the law gives a Prisoner the right to choose his Jury not on absolute choice but a modified one, and he has a right to the full benefits of the modified choice, which it is impossible to secure to him, upon a joint trial unless the Prisoner, agree to join in their challenge. The benefit of the right of peremptory challenge is liable to be entirely frustrated except by a separate trial. This right is so remarkable, and therefore its resulting benefits exercise so great, that it should not be made subject to the discretion or good pleasure of any man.

It is submitted that the weight of the English
authorities is strongly in favor of the
Prisoner's right to a separate trial:-
the reason of the numerous authorities
require this Construction; the authority of
Ch. J. Marshall & Mr. J. Washington agree
with the English Rule; while the two divisions
of the Sup. Ct. of Virginia are conclusively
in favor of the right: The cases cited
from Cawen & Wharton's Rep. show by strong
and emphatic implication that the
right to a separate trial is founded upon
the right to peremptory challenge; and
flows from it as a just and necessary con-
sequence.

It seems idle & useless to cite authorities
in support of the argument, drawn from the
force of the record, and the facts of the case.
The case adds nothing, truly to the reason, to
the Justice of the Court; I willingly rest it
upon the argument, drawn from the
doctrine, of Constitutional Law; upon
the reason and spirit of the Law; and
the design and end of Jury trial.
I urge the argument grounded upon
the necessary character of Law to secure and
establish Justice. In order that the
administration of Justice may take place
by ^{general} fair and impartial Laws, that it
may be just and fair; and the rights
of Prisoners may be secure against
the will or discretion of any man, I ask
that the Judgment below be reversed.

Arthur M. Windett.