141 Michael Taylor—Am drayman in Chicago; I know Defendant; think I first saw him on 5th March, 1858, at Milwaukee Depot, about three o'clock, P. M.; he got me to haul some goods for him; gave me the number of his room; I got the things at the Depot (Milwaukee Depot) one barrel of household goods, rocking chair, two trunks, &c.; I delivered the things up stairs, No. 30, in a building close by Clark street bridge, Pomeroy's building; I met a lady there and she asked me if they were the goods that were sent; she paid me; she asked where was the man that sent me; (describes the lady) it was about four o'clock,
142 P. M.; (looks at trunks shown) those look like the ones I delivered.

COPY OF STATEMENTS of Bill of Exceptions, relative to Experiments.

TUESDAY MORNING, FEB. 1, 1859.

220 Before the opening of the Court on this morning a door, having a number of hooks and screws driven and screwed into it, was brought into the Court room, and placed immediately in rear of the Jury, and in plain sight of said Jury, many or all of said hooks being bent or broken down, which door, with said hooks and screws, remained in the presence and plain sight of the Jury until the opening of the Court. The Defendant's Counsel called the attention of the Court to said door and hooks and screws, and enquired for what purpose it was exhibited. To which the Attorney for the people replied that the said hooks and screws had been screwed into the said door and experiments tried on them by placing or hanging weights on said hooks and screws, to show the impossibility of the deceased, Sophie Werner,
221 having committed suicide by hanging herself on a hook or screw, screwed or driven into a door in the manner stated by the Defendant in his confession.

The Counsel for the Defendant then objected, and took an exception to the exhibition of the said door to the said Jury, and moved the Court that the said door, hooks and screws be removed from the presence and sight of the Jury, which motion was granted by the Court, and the said door was removed.

There was no evidence tending to prove that the door so exhibited to the Jury was the door of the room in which the said deceased was stated by the Defendant to have hanged herself; but, on the contrary, the door of the said room was afterwards produced in Court, and it appeared to be, and was a different door: nor was there any proof that the said hooks and screws were the same found in the room of the Defendant; nor were they in any manner identified. When the Court ordered the last mentioned door to be removed it decided that no experiments would be allowed to go to the Jury, except those to be made on the door of the prisoner's room, and that those should be made in the presence of the Jury.

222 The Attorney for the People then brought into Court the door of the room occupied by the Defendant at the time of the alleged murder, and two hooks and a quantity of screws found in said room at the time of the arrest of the Defendant. Some new hooks and screws, together with a new hemp cord, had also been brought into the room by a Mr. Dexter, as a friend of the prisoner and in his behalf.

The Prosecution then proposed to make experiments on the door of the prisoner's room, in the presence of the Jury, with a view to test the possibility of the deceased having hung herself in the manner alleged by the prisoner on his arrest. To such or any experiments being made in the presence of the Jury, the Defendant, by his Counsel, then and there objected, and assigned among others the following reasons:

1st. The Prosecution does not propose to produce the same screws or hooks, or the same rope (or one even of a like kind) upon which the deceased hung herself as alleged.

223 2nd. Nothing but the testimony of experts is competent upon a question of skill or science.

3d. Upon questions of common experience no evidence whatever is admissible.

4th. It is not proposed to give in evidence any fact or circumstance alleged to have occurred, nor any admission of the Defendant.

5th. Because the proposed experiments are immaterial, irrelevant, necessarily uncertain, and otherwise incompetent.

But the Court overruled the objection of the Defendant, and directed the experiments to proceed in the presence of the Jury—to which opinion and ruling the Defendant excepted.

And thereupon the prisoner's Counsel stated to the Court that certain screws with hooks on them, to wit: one large and one small one were presented and were alleged to have been found in the prisoner's room, at the time of arrest; that he understood the Prosecution
224 would make the experiments upon the supposition that the rope was attached to the curve of the hook; that the screws of the hook were in fact long enough to reach through the door and still leave room enough on the shaft of the screw, between the shoulder and the door, to amply hold a rope; and that the Defence would contend that the rope was placed by deceased between the shoulder and the door, and not on the curve of the hook; and that if the Prosecution were first allowed to make the experiment on the curve of the hooks, and break or bend them, that no experiments could be made on the prisoner's view of the case; and that while the prisoner objected to the experiments *in toto*, yet he requested for the reason aforesaid that the first experiments should be made by the prisoner, as it was conceded on all sides that if the prisoner failed on his hypothesis of the mode of placing the rope, he certainly must in that of the Prosecution.

The Court conceding the reasonableness of the prisoner's request, decided that the pri-
225 soner should have the full benefit of his exceptions to the experiments, and still, for the cause assigned by his Counsel, would allow the first experiments to be under the control and direction of the prisoner. The experiments were then proceeded with. All the experiments were made on the door by placing the same against the Judge's stand, and the Jury holding the same against the wall and suspending one of the Jurymen, who stated that he weighed about one hundred and forty three pounds, by the said new hemp cord.

The first experiments were made by Dexter, who made them at the instance and request of Defendant's Counsel. The experiments made by him and under direction of prisoner's Counsel, were made partly on the two hooks, and on two of the screws brought into Court by the Prosecution, and found in his room at his arrest. The experiments made subsequently by the Prosecution were made with the same rope, attached to leather straps at the shoulders of the Juryman who was suspended, and on the two hooks from the prisoner's
226 room, and on two screws, one found in said room and the other brought in by said Dexter, as aforesaid.

The result of said experiments was as follows:

The door was placed against the shutters in the rear of the Judge's Bench, and the experiments commenced.

1. A hole was bored in the head and tyle of the door and a two inch screw screwed in, A. Wheaton, a Juryman, hung to it, and held.
2. An inch and a half screw was then used with the same effect.
3. The Juryman stepped off the chair, and the screw gave.
4. The Juryman stepped off the chair; the rope slipped and screw was pulled nearly out.
5. A hook, size of smaller one found in the room, used, and did not give.
227
6. Another screw, of same size, used with same effect.
7. Experiment on last hook did not give.
8. Experiment on plain one and a half inch screw did not give.
9. Same experiment with same effect.
10. Tried by Prosecution, on a hook similar to the one used in No. 5 hook; the hook
228 broke.
11. By Defence, one of hooks found in Jumpertz's room; it did not give.
12. By Prosecution, on same hook in a different place; hook was bent down.
13. With same hook, Juror stepped from chair, and hook pulled out.

229 14. A two inch screw used, and when Juror stepped from the chair it was nearly pulled out.

15. A screw found in the room was then used, and when the Juror stepped off from the chair it remained firm.

ABSTRACT OF MEDICAL TESTIMONY. by Prosecution

143 The Prosecution called Doctor Wooster Beach, who examined the remains of Sophie Werner in New York.

Joseph M. Freer, and Doctor Isham, who examined the remains after their return to
209 Chicago, describe the mutilations and situation of the body the same as Dr. Beach above stated in this abstract; and the said witnesses further state that from the condition and ap-
217 pearances of the remains they were unable to give any opinion as to the cause of death; that the congestion of the brain described by Dr. Beach might have been produced by strangulation; that strangulation by hanging would produce such congestion. Other causes, among them poisons, irritant or narcotic, would produce congestion of the brain. Doctor Freer also testified that he noticed a mark on the neck, which might have been produced by a rope or by decomposition.

ABSTRACT OF TESTIMONY OFFERED BY DEFENCE.

EVIDENCE relating to state of mind of Sophie Werner; tendency to suicide. Also, as to her hand-writing.

264 Louisa Weglehner.—Knew Sophie Werner 7 years very well; was intimate with her; lived in the same house with her; I know her hand-writing; often saw her write in market book and letters (letter purporting to be written by Sophie to Jumpertz shown, her same letter shown to Milwaukee witnesses); it is her hand, I am sure it is her hand-writing, it is the very same; I know Jumpertz; since he came to this country; when he first came to New York he lived with us; he also boarded with us here in Chicago, his character was good, first rate; he got acquainted with Sophie Werner at our house; she had parted from her husband before; after he became acquainted with her, she came to our house to work;
265 while she lived with Werner, her husband, she had a great deal of trouble; he kept another woman; the woman he kept was boss of the house, and Werner gave her all the money and control, and compelled his wife to do all the work, and go to her for money, and told her if she didn't like it, to leave; Mrs. Werner had to do the washing for this girl; sometimes she
266 was compelled to sleep in same bed with Werner and the woman; she sometimes said she would go away; would go and try to get another place; one day they had much trouble, and the girl told her to go if she did not like to stay; she said she would go, and bid me good bye, and started; in three hours she came back; in the conversation that followed, she said a shilling's worth of laudanum will do for me; I said she was crazy; she had better go and get a place in a small family; she declined, and asked me how I would like to do so; I told her I feared she had laudanum in her pocket; she said no, and went away; I did not see her till next morning; that night some one came to our room and walked up to my husband and said, Sophie had poisoned herself; Mr. Werner's brother, George Werner, brought the word, said she had taken something, and he believed it was poison; I saw her next morning at 9 o'clock; she came to my room and cried, she said a shilling's worth of laudanum was not enough; God did not like her; she began to vomit; one cheek was red, and the other was white; she asked me to fix her a bed, she couldn't stand; she was sick all that day, and I nursed her; she said she took laudanum; she said she felt drunk, and her husband gave her warm water; soon after this, she and her husband went out of our neighborhood, and did not see him again until after she had separated from her husband, and was washing for her living; she came to see me, and said she had to wash for her living, and was not able to do it, and wanted to live with me, and I consented, and she came; while

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she lived with us she would cry sometimes and then laugh; she was all the time in these crying and laughing fits; she would begin to cry, and then laugh and jump and say I must not think of it; I must put it out of my mind; she cried frequently, and seemed in trouble too much; she left my house before Jumpertz did; she had been married five years; had had five children, all dead; her husband sent her to the old country from New York; while
271 she was gone, came out to Chicago and lived with another woman; on her return she came on to him.

Frederick Weglehner.—Is husband of last witness; knew Sophie Werner and know
272 Jumpertz; has known Sophie ten or eleven years; the letter is her hand-writing; knows her hand-writing; has seen her write; relates her treatment by her husband, and the state
273 of her mind, and attempt at suicide, the same as last witness; also, testifies to her going twice to the river to drown herself; her husband was at last indicted for adultery, and ran away; knew Jumpertz same time as last witness; his character is good; was always steady,
279 industrious and peaceable.

William H. Eddy.—Knew Sophie Werner; she worked in her husband's shop, 84 Ran-
288 dolph street; I had a conversation with her; it was about the time Werner was indicted for adultery; I procured indictment; she told me her troubles; said she was treated worse than a nigger; she was willing to work for decent people, but not for that whore down in her husband's shop, and sleep in the same bed with her and her husband; I can't stand it; she said she had to do all the menial work, and be treated worse than a slave; I don't think I ever saw her smile; I remarked this; she said she had no desire to live in such trouble, and there was no prospect of its being ended; I got Werner indicted, and he ran away; she did not do anything against him; she left me crying the last time I saw her; near the Court
291 House in the street; I thought her despair increased after her husband went away; she said she was left sick and desolate.

Isaac Shelly.—Knew Sophie Werner while she lived with her husband; he had another
291 woman; she seemed much dejected and threatened to kill herself.

Character and Conduct of Jumpertz at Milwaukee.

280 Augustus W. Goetz.—I live in Milwaukee; have known Jumpertz two years; he worked for me in Milwaukee eight or nine months; his character was good, he was peaceable, industrious and steady; he lived with Sophie Werner there; he told me about their relations when I employed him, and asked me if it would make any difference with me; she once asked me to persuade him to marry her; I spoke to him about it; he refused, said she was too old, &c.; spoke well of her; I told her he refused; she said I cannot be mad at Henry if he does not marry me; she liked him very much; Defendant bought a lot of me
283 in Milwaukee.

Cross-Examined.—I saw Jumpertz after he was arrested, and asked him why he cut up the body; he said he could not get it into the barrel without; he said he did not know
284 where the entrails were as he buried them at night; I never heard anything against him before his arrest, everybody liked him.

285 Hiller Buchenhimer.—Live in Milwaukee; knew Jumpertz since a year ago, when he came to Milwaukee; he worked for me from May to December; for me and Goetz; his character was good; when Sheriff Gray and McComas came to Milwaukee I went with
286 them, as interpreter, to see Minna Kacher; a letter was shown her; the same one shown her here; I asked her if she could tell by the hand-writing if this is the hand-writing of Sophie Werner; she read it and said she thought it was Sophie's hand-writing; could not
287 tell exactly; she said it looked like her hand-writing; had the appearance of it.

John Gray.—I am Sheriff of Cook County. (The letter purporting to be written by
288 Sophie Werner to Jumpertz, and claimed by Prosecution as a forgery, shown to witness.) I took this letter to Milwaukee; McComas went with me; we showed the letter to this old woman, (Minna Kacher); this is the same letter; it was given back to me.

EVIDENCE of receipt of Letter by Jumpertz, about 1st of March, claimed by Defendant to be the Letter found in his room at his arrest, written by Sophie Werner to him, and claimed by Prosecution to be a Forgery.

292 John Lotz.—I worked for Frazza & Ribolla in March, 1858; Jumpertz worked there one day; Jumpertz got leave to go to Post Office; he went and came back with a letter in his hand; he opened and read it and handed it to Seigletz, who said, "She wants to come and see and kiss you and afterwards die;" Jumpertz took off envelope as he came in, and
293 threw it in the stove; I saw the stamp on the back Milwaukee; Seigletz told him he'd better save the letter; he said I never save any letter from her, but it might be best to save it; I went up stairs and got him an envelope and he put the letter into it and put it in his pocket; this was about 1st day of March; I said what a foolish thing to write; George Werner asked Defendant what was the news, and while Defendant and Seigletz were read-
294 ing letter a customer came in, and George had to shave him, and Defendant told him he could read the letter in their room.

August Seigletz.—On 1st of March, 1858, I worked for Frazza & Ribolla, barbers, in
296 Chicago, and Defendant worked there; Defendant asked Frazza for leave to go to Post Office after letter; went and got it; one remark in the letter was that she would come and see and kiss him once more and then kill herself; Jumpertz asked for an envelope and it
297 was gotten; Jumpertz said he would keep the letter, for it would help him some time if he got in trouble with her.

Cross-Examined.—The letter was received Monday or Tuesday the first week in March, it might have been first or second; Jumpertz tore off envelope and put it in the stove, as he always did; all but business letters; he said the letter was from Mrs. Werner; I can't
298 remember whether I had the letter in my hands; at this time I understood Sophie was coming to Chicago; Jumpertz said she was coming to see him and then going away; all I understood was, she would be here on some evening train; he read out of the letter that
299 she would then go away and trouble him no more.

295 Frederick Becker.—I publish the National Democrat; I published letters for German parties in my paper of March 1st, 1858; I published a letter for Henry Jumpertz; it was published on Tuesday, 2nd of March; it was spelled Hein. Jumpertz; we got the list of letters from Post Office on Monday, the day before; it would have been published on that day if it came to the office any time in fourteen days before; the letter may have been in
294 the office twelve or any number of days up to fourteen.

Cyrus W. Pomeroy—Swears to the condition and situation of room in Pomeroy's block
300 occupied by Jumpertz at the time of the alleged murder; it is in fifth floor; building stands on Water street, at corner of Clark; during business hours no place in the city more thronged; a large number of rooms in building rented to lodgers; generally unmarried men; were a large number lodging and doing business there at the time; most of the rooms fully occupied night and day; there was no passage way down from Jumpertz's room out of building except unto Water street; there is no time during business hours when there is not a throng of people in or about the building; nor till a late hour at night.

303 Alexander Ribbola.—Know Jumpertz since July, 1856; he worked for me eighteen or nineteen months; his character is good; could not be better.

The Defendant called the following medical witnesses:

303 Doctor H. A. Johnson.—Am a Physician and Surgeon, and Professor in Rush Medical Institute; have practised five or six years in Chicago; narcotic and irritant poisons taken in fatal doses usually produce congestion of all the blood vessels of the brain; sometimes it
304 is discoverable in the *sinuses* only; sometimes in all the blood vessels; if the blood vessels on the surface of the brain were found congested, and no other unhealthy appearance, as between the suppositions of death by poison and strangulation, the appearances would indi-
310 cate more strongly that the death was by straugulation. If death was produced by hanging

with a rope about the neck, and the head then cut off and body sent to New York, would not expect after its arrival there to find marks of rope on the neck—absence of the mark under such circumstances would not tend to contradict the supposition of death by hanging.

Doctor Brainard.—Testifies to the same substantially; also the following Physicians;
310 Doctors Parker, Paddock, Clapp, Andrews and Rogers.

ABSTRACT OF EVIDENCE OF JUMPERTZ' CONFESSIONS.

320
163 Jacob Rehm.—On the same evening of his arrest in my office, Bradley had conversation with the Defendant in my presence and in the presence of John C. Miller, the City Attorney; he said his name was Henry Jumpertz; came from Prussia; 24 years old; he stated that he was acquainted with Sophie Werner; got acquainted with her at Weglehner's; asked Mr. Bradley if he was the Judge. We told him who we were; one asked him where Sophia Werner was; he said "I guess you know;" he said he knew Sophie Werner; she lived at Weglehner's, and came to bed with him there one night; that on Sunday he went
164 home to his room and found her hanging in his room; as he opened the door he found something hanging against it, about a foot from the floor; the dinner was on the table as he went in; he sat down by the window; don't know whether he took her down first; sat by the window half to three quarters of an hour; took her down, and laid her on the bed; and there was a line or letter on the table saying good bye; read the slip or line; laid it on the
165 window, the wind blew it out; she hung on a cotton rope or cord, on a plain screw, with a hook same as they have in Barbers' shops; did not know what to do, whether to see the Coroner or what to do; concluded to cut her up, for fear friends would hear of it; he took out the intestines and buried them away out on the prairie, one or two miles; cut off the hair; don't remember as he mentioned what he did with the rope; he cut her up and put her in a barrel, and kept it some eight or ten days; on the 17th, he got a drayman to take it to Depot; he said he cut her, and a little blood came, not much; I had a talk with him next morning; I told him if he could find the place where he buried the intestines, I would go with him; said he
166 thought could not find it; (a box of old irons, chisel, saw, case of surgical instruments, knife and letters shown to witness) those were found in Jumpertz's room when he was arrested; it was some days after first conversation that I offered to go with Defendant to find the remains; he said he would not know the place; I found two screw holes in the door of Jumpertz's room.

Cross-Examined.—When Defendant made his confession, he seemed disposed to make a full statement; he was excited some, and spoke quick; on the first night he said he buried
167 the intestines on the prairie, and pointed north; the next morning he said on the lake shore in the sand; I am acquainted with land north of City; the sand reaches back from lake in same places half a mile; said he buried them (the intestines) in the night, and didn't know as he could find them; I have been pretty active in this cause; went to New York, hunted
173 up evidence, &c.

153 C. P. Bradley.—I am a detective policeman, and have been four years; have acted with Marshal Rehm in relation to Jumpertz's case; went to No. 30 Pomeroy's block to examine room, &c.; I, with Marshaal Rehm arrested Defendant, and went with him to Marshall's office, and there heard his confession; said he was a Prussian, 24 years old, had worked as
154 barber in New York, Chicago and Milwaukee; he asked me if I was the Judge; said he wanted to tell the Judge all; I asked him if he had a female friend; said he had; asked him where she had gone, he said I guess you know; told how, and when and where he got acquainted with Sophie Werner; where he boarded with her, and about her having child, &c.; that the Dutch taunted him about his connection with her, and he went to Milwaukee;
175 stated how long they lived there, and then he left her and came back; she wanted him to marry her, he refused; finally he wrote for her to come, and she came the fore part of March; he took her to his room; no one saw her there; on Sunday he worked in the shop

[illegible]

till 12 o'clock M.; that when he opened the door of his room, it opened hard; he found her hanging by a cotton cord on a plain screw, which she screwed into the door herself; I was very much frightened for half an hour; first thought to go for Coroner, then thought as I was a stranger, and nobody knew me, feared the disgrace, and that it would get into the papers; then thought I could dispose of body by cutting it up into small pieces; while thinking the matter over I saw a note on the table, that she was tired of life, forgave me, &c.; he said the paper blew out of the window; he said he took a lancet after he had taken her down and put her on the bed to bleed her, to see if she was dead; got only a little drop of blood from the arm; I asked him why he did not call some one in; he said as he had begun to cut her up, he must go through; he said he destroyed the cord; he buried the entrails and cut her up, &c., same as stated by Rehm; went to Jumpertz's room again; found things, and among them the letter purporting to be written by Sophie Werner to Jumpertz (the same shown to Milwaukee witnesses, an interpretation of which is hereto attached); this letter was in a blank envelope with other papers on a table.

Cross-Examined.—Jumpertz said when he came into the room and found her hanging he took her at once and laid her on the bed; felt bad, and hesitated what to do; went to the window and saw the paper; went to window for air; read the paper; window open; while he was hesitating the wind blew the paper out of the window; I give the substance of what he said; I don't know whether he said he felt of her to see if there was any life before or after he took her off the bed; he tried to bleed her, to see if she was dead; this confession was before the body was returned from New York; can't say whether he said he cut one or two holes in her arm; he said he buried the entrails out on the prairie, on North Side; thonght he could find them if some one would go with him; he said he had destroyed all the letters she had written him, but one, that in which she said she wanted to kill Werner; told where he sent her clothing; he had sent them to a respectable person in Massachusetts; Jumpertz did not tay she hung on such a hook as is in barbers' shops; I may have said I would hang Jumpertz on that hook; I have not a deep feeling to convict him; if I said I would hang him, it was in joke.

John C. Miller.—I was present at Jumpertz's confession; gave account of his name, age, history, where he worked and for whom, where, how and when he became acquainted with Sophie Werner; same as last witnesses substantially. (See copy of Miller's notes attached to bill of exceptions.

William Tenbroeck.—Am jailor; while Jumpertz was in jail he sent for Doctor J. A. Hahn to come and see him, and I was present at this interview; Jumpertz said to the Doctor, I have sent for you to see if they can tell whether she (Sophie Werner) had been poisoned so long ago; I think the Doctor said he thought not; don't remember what he said; I said they could tell if they had the stomach; Jumpertz said he had taken it out; I said they could tell if she was hung, by the mark on the neck; he said he guessed that was cut off with the head; I don't remember anything else that was said.

On his cross-examination witness says he thinks it the duty of a jailor to listen and testify to statements of prisoners.

Doctor James A. Hahn.—I knew Jumpertz as a barber before his arrest; he used to shave me; I only had one conversation with him since his arrest; it was in the jail in presence of Jailor Tenbroeck; he said he wished me to do him a favor; I told him I would do so if I could; he said they were trying to make out that Sophie Werner was poisoned, and he wanted me to be present at the examination of the body, so that he could have some one he had confidence in to do him justice, and tell the truth about it; I said I had heard the inwards were removed and we could tell nothing about it; he said he had taken out all below the partition; I then said we could tell nothing about it; this was all that was said.

ABSTRACT OF TESTIMONY of Jumpertz and Sophie Werner's hand-writing, given by Prosecution.

Counsel for the People then offered in evidence a letter from Defendant to Mrs. Eberts,
229 and proved the letter to be in the hand-writing of Jumpertz. Defendant objected, because the letters was irrelevant and immaterial. Court overruled objection, and Defendant excepted.

Prosecution then offered, and gave in evidence to Jury, a letter, purporting to be
231 written by Sophie Werner to Defendant, threatening suicide (being the same letter shown to Milwaukee witnesses, and declared by the Prosecution to be a forgery. See translation in bill of exceptions.

235 Prosecution then gave in evidence lease of Jumpertz's room in Pomeroy's Block.

Prosecution then offered in evidence a receipt. signed Sophie Jumpertz, dated March
254 3d, 1858, given by her to Edward Vollert, offered it as the hand-writing of Sophie Werner, the only specimen Prosecution could obtain. Defendant objected, as it was offered only for purpose of comparison of hands which was not admissible. Objection overruled and exception taken, The receipt was admitted in evidence and placed in the hands of Jury.

Prosecution then offered a piece of the genuine hand-writing of Henry Jumpertz. It
258 is offered simply as a writing and not on account of contents. Defendant objects on the ground that it can only be admitted for comparison, and for such purpose not admissible. Objection overruled and exception taken.

LETTER OF SOPHIE WERNER.

252 *Dear Henry:*—Thy letter I have received and has grieved me much my forebodings came true how unhappy I am, yes, Henry unhappy I am long as I know thee love, I will bear for I have deserved it disgraced my parents under the ground. O Henry all for thee whom I loved yes I come veiled to see thee once more then I will flee forever to renounce thee and pray for thee and weep.

O Henry thou hast taken from me of my all, my honor. I will renounce thee, no longer annoy thee, be happy. I shall find my *home* with my mother, ay that was a virtuous wife no adulteress like her child. Yes my love could do all because, thus I had never loved. Now I must atone, had I ever loved Werner so much, but it is over, avenge myself I will on him ere I die, no thee I will not avenge myself, for I indeed loved thee, but I knew it all before, thy wishes I will fulfill, one kiss yet from your lips then I will flee ever ever.

And forgive me for it if I have grieved thee. It was not my will. O, how happy was I when thou was sitting by my side. I forgot everything, sorrow and misery. Oh, good Henry, don't be angry with me, and I am not angry with thee, for I love thee. Yes, a woman who renounces the world because of a man—I forget thee, never, not even in the grave. You want to imprison me; thou art right, I do deserve it. Why did I not follow mother's symbol, chastity? But to thee I ever gave all—my whole heart. Farewell, don't forget thy Sophie, all that I could not say when taking leave, my heart would be too heavy. I will go to Chicago, so long until I leave for Rochester. Werner must die with me, for he has caused my ruin and my mother's death. Be happy, I forgive thee everything; farewell and be happy. Thine ever true loving SOPHIE.

Thy name I don't deserve then farewell and be happy. I know not Henry who interrupted me in writing. Guess who it was. Charlie knocked at the door. I ask who is there he says I want to tell you something from Henry. I unlock the door, he came in, was drunk somewhat, and chased me about the room until 12 o'clock like a lion. Ah, ah, good friend, even that had to feel upon my heavy heart, till I fled. I deserved it. Why did I not become a wife when I loved you secretly? It was no such sin. I have also written to my sister. That dog of a man goes away to-morrow. He promised strictly to me not to tell my shame to my sister. O Henry it is hard to write husband and I not be the wife. Forgive me, I cannot do otherwise, veiled. No woman is permitted in the house. Until Wednesday, thou art and remainest my Henry. Have no care, I will fulfil faithfully all thou hast commanded. Till I have seen thee, farewell! SOPHIE.

B-200

Henry Sampson's
Deft in Error
vs
The People

abstract

Filed May 12. 1857
L. Leland
Clerk

Dumpulz
ad
The People.

Indicted, Tried & Convicted in
Cook County Circuit Court.
for the murder of Sophia
Warner

I shall argue the following alleged Errors

1st The Record of said Court does not show with legal Certainty that the indictment on which Prisoner was tried was ever found by the Grand Jury.

2d " The motion for discharge of the prisoner for failure to try him at the Second term when he might have been tried was improperly denied.

3d " The motion for a new trial was improperly over-ruled.

4th " The Court improperly admitted in Evidence on the trial the Statements of Sophia Warner the deceased.

5th " The Court Erroneously admitted a Receipt of Sophia Warner and writings of the defendant to be given in evidence to the jury for the mere purpose of Comparison of hand writing to determine the genuineness or forgery

[12825-148]

of a certain letter offered in evidence by the People purporting to be written by the deceased to Imputz and also evidence of Spelling of Defendant. The said receipts and other writings not being in evidence or material or admissible for any other purpose.

6th " The Court Erroneously allowed certain Experiments with a door, hooks, Screws, Rope & weights to be made by and in the presence of the Jury.

7th " A door with hooks & screws showing the result of Experiments made by some persons & having relation to the case was exhibited to the Jury both in & out of Court for the purpose of influencing their judgments in the case.

In considering these objections the Court is bound to be governed by the Rules of the Common Law except where changed by the Statute.
1 Stat Ill. 408 Sec 18.

First— The Record does not show with legal & sufficient certainty that the Indictment on which the Prisoner was tried was ever legally found & presented by the Grand Jury.

The record shows that the term at which the indictment was found was the June special term 1859. an impossible date and therefore no date.

The record recites that on the 30th day of June in the year of our Lord, aforesaid (to wit 1859 that being the only date before mentioned) the following proceedings were had. "This day "came into court the Grand Jury & make the "following presentments Endorsed a true bill "to wit—

The people of the State } Indictment for
v. } murder
Henry Dumpuls }

and the said Grand Jury having no further business before them are discharged by the Court.

This brief statement contains all the evidence of the finding & presentment of the Indictment and amounts merely to this that on some day not possible to be fixed from record the Grand Jury presented in Court some paper which contained the following to wit. People of the State vs Henry Dumpuls Indictment for murder & Endorsed "a true Bill".

There is no affirmative allegation in the record that an indictment was presented

by the Grand Jury, it is styled a presentment & no other discription of its character or contents is given except that the Grand Jury made the following presentment to wit. People of the State of Henry Dumpty. Indictment for murder. The record affirms no more than is above recited & the record contains nothing to aid or extend it: this Presentment is preceded by the statement of the empannelling &c of the Grand Jury & followed immediately by their discharge The record shows that this was their only act.

Afterwards on the same day and year an indictment was filed in the Court aforesaid in the words & figures following (reciting the indictment on which defendant was tried) the caption of which shows it was found in 1838.

There is in this statement of the filing of an indictment no words or clauses of reference to the previous statement of the presentment by the Grand Jury or other means of determining whether the presentment so stated to have been made and the indictment afterwards filed in Court are identical it does not appear by whom the indictment was filed nor whether in open court, but it does appear that it was filed after the discharge of the Grand Jury.

Even if it be assumed that the

indictment filed in Court after the discharge of the Grand Jury is the presentment made by them still it does not appear to have been presented in Open Court.

And the record should should show affirmatively and certainly that the indictment was returned into open court by the Grand Jury.

This record states that the Grand Jury returned into Court with a presentment the general character of which only is indicated & were then discharged, and that afterwards on the same day the indictment in this case was filed in Court.

Now this record is defective in certainty in the following respects

1st It does not appear that the presentment made by the Grand Jury was an indictment

2d nor that it was against the Defdt. it might have been another of the same name.

3d Now that if an indictment for murder that it was the same murder for which Defdt was tried.

4 There is no evidence in the record that the indictment filed after the discharge of the Grand Jury, is the same as the presentment made by them.

5th The record does not show when the indictment

(6) in the present case was found

2d. The motion to discharge the prisoner for failure to try him at term at which he might have been tried was erroneously overruled

The Constitution Art XIII Sec 9 provides that in prosecutions by indictment the accused shall be entitled to a speedy trial &c

The Statutes of the State provide in that, that unless the prisoner is tried at 2d Term he shall be discharged

Now the prisoner was not tried at the second term of the court having jurisdiction & ability to try him but the case was continued to a third term & then continued illegally in the absence of the prisoner & his counsel to a special term without his consent & his motion to be discharged denied.

The Statute either compels the people to try the prisoner at the third term or forfeited or it is a dead letter & should be stricken out of the Chapter of "Personal Rights"

3d. The motion of the defendant to set aside the verdict of the Jury & grant him a new trial for the reasons alleged in his motion was erroneously denied. In support of

1

this motion in the Circuit Court some matters were alleged which fully appear in the bill of exceptions taken on the trial of the cause such as the admission of illegal evidence including the declarations of Sophia Warner. The experiments made in the presence of the Jury with door locks & screws the admission of witness of deft & deceased for the mere purpose of comparison of hand writing

The admissibility of this evidence will be considered in discussing the Exceptions taken to it in the trial.

In arguing the exceptions taken to the decision of the Court overruling the motion I shall consider only such grounds of the motion as do not fully appear in the bill of exceptions taken on the trial.

These 20 pers as they are intended to be insisted on here are as follows

1 1/11 The absence of the witness Davis & Theobald & Mary Fisher

2 2/11 The conduct of the Jury and officers who had them under charge.

3 The Exhibition to the Jury out of Court of a door exhibiting the result of certain Experiments made by some persons upon the same with knives

(12 825-176)

(8)

& Pleas &c Calculated & intended to —
influence their judgments in the case

4th The Verdict is against the Evidence in the case.

Upon the 1st point above stated The absence of witness the motion is based upon several affidavits. The Dep & his counsel Mr Comas & Mr Taylor in support of motion & D. C. Miller, Jas Taylor & S. T. Price in opposition to said motion. The affidavits of Dempsey & Mr Comas show that a witness by the name of Mrs Davis was seen & conversed with by Mr Comas a few days before the trial at Milwaukie the place of residence. That she then informed him (Mr Comas) that she had seen or talked with deceased a few days before his departure from Milwaukie & consequently but a few days before the death & the dec'd had exhibited great despondency & spoke of not living long & not being long for this world". That witness had just been confined and was sick and at the time of the trial was unable to attend Court. That is evidence of every possible diligence to obtain this witness

It appears by the record that a motion was made for continuance on account of the absence & the cause continued one day when upon the public Prosecutor agreeing to produce her on the trial The motion was denied the Court intimating that if not produced they would consider her absence on motion for new trial.

The writ to Theobold was issued to Mc Combs at the same time and place and would have testified substantially the same as Mrs Davis. The absence of this witness at the trial was the result of mere accidental omission to include this name among the rest of writs furnished by Mr Combs to the agent to summons them & cannot justly be attributed to any lack of diligence by the Prisoner (See the affidavits of McCombs)

The testimony of Mary Irish was most important according to the statement made by her to McCombs & Dexter as shown in their affidavits. She saw the deceased on the very day of the death (first on a Sunday in March & must have been on the day she died) & the deceased showed a bottle of Laudanum & Espoused

[illegible]

a determination to take her own life

This witness was subpoenaed & attached but is escaped from the custody of the Officer upon whom she could attend. Certainly all diligence is shown by the Depts. to obtain this witness. The prosecution in opposition to the motion filed the affdt of D.G. Miller who swears to his belief that a Mrs Debs produced as a witness by the prosecution is identical with Mrs Davis the writing denied by the Defendant but as he fails to give any fact tending to establish such identity or furnish the slightest reason for his belief this affdt. in this respect must be wholly disregarded

The (Miller) further swears to any statement made by the witness Tisin in his presence which differs in substance from the statement made by her to Mr. Comas & Dexter. This latter statement sworn to by Miller could only be admissible to impeach the witness if produced in case she should deny having made it besides. It only differs from the statements made by her to Mr. Comas & Dexter in one respect that is merely as to her recollection of the date of her interview with

deceased, in one case she could not
fix the time in the other she fixed it
in March 1858. This difference of
a recollection it may well be presumed
arose from subsequent reflection upon
the subject & would have been explained
had the witness been questioned on the subject

The attempt to show that Dr Le
consented to the absence of the witness
was no attention, if true it could not
prejudice the Defendt. as he was not
one of the Counsels in the case &
must voluntarily & assist the counsel
defense in procuring witness, But he
as well as the Defts. & his counsel distinctly
deny that they ever consented to the discharge
of these witness. The testimony of these
3 witness all of whom saw the dec.
& conversed with her either on the day
of her death or immediately before would
have proved her despondency & suicidal
tendency & purpose at the very moment of
the catastrophy

Of this testimony the Defts
was deprived without fault or negligence
of his own or his counsel.

Upon the 2d point the misconduct
of the jury & officers who had them in charge
the facts relied upon to show such misconduct

[12405-118]

12) an served on each by the officers attorneys
The Affdts of Sutton Snow & Bruce show the following facts.

That one of the Jury by the name of Lovis was on four different occasions separated from the other jurors while the trial was in progress & while so separated went from 1/2 to 3/4 of mile from them to his own house, in charge of an officer then left the officer & went alone into an upper room of his house out of the presence & hearing & control of the officer & saw & conversed with one or more persons for 10 or 15 minutes & then on one or more occasions accompanied the officer to a hotel & dined at a public table.

2 That on another occasion said Lovis and another juryman were separated from their fellows & without any officer accompanying them were allowed to go each into his own house & remain there the one about 5 the other about 15 minutes

3.d That on another occasion during the trial a juryman by the name of Bliss was separated from the rest

of the jury, for a half an hour or more & left and left at the Court House in charge of an officer & that while so separated a woman was allowed to converse with him in a whisper which the officer could not hear but heard him speak of the case so far as to enquire when it would End. The Court certifies in the bill of Exceptions that he directed the Sheff. to accompany Lewis to his house to see a member of his family who was said to be ill.

It appears by the record that all these separations occured without the knowledge & consent of the Defdt. & no attempt is made by the prosecution to disprove interference with the jurors so separated.

The authorities cited in the printed points filed in the case are sufficient to show that a separation of the jury in a Capital case without consent of the prisoner is fatal to the verdict unless it resulted from accident misapprehension or mistake of the Jury and under such circumstances as precluded the possibility of prejudice to the prisoner

Here no accident or mistake is alleged, The separation is clearly proved in numerous instances & the possibility

14 of interference with the Jury & injury to the rights of the prisoner is not disproved either by the circumstances of separation or otherwise. On the contrary the separations were such & for such length of time as clearly furnished opportunity for tampering & interfering & there is no evidence tending to disprove such practices.

Here an repeated, unexplained unexplained & unauthorized separation of the Jury in a capital case for sufficient periods of time & with sufficient opportunity for tampering & interfering.

The decisions of this case must furnish the rule of conduct of both the jurors

3° The exhibition to the Jury of a door &c showing the result of certain Experiments. The fact material to the alleged improper attempt to influence the Jury as shown by affidavit & as also certified by the Court in the bill of Exceptions taken on the trial so far as they come under this observation.

It appears by the record that on morning while the trial was in

purpose before the opening of the Court. but after the Jury had retired & taken their seats in the Court room. a door with certain hooks & screws driven into it & there broken & pulled down was brot into the Court room & exhibited to & examined by the Jury before the Court commenced & it had after the Court was opened & the attention of the Court was called to the door & the Public Prosecutor stated to the Court in the presence & hearing of the Jury that the door was brot in for the purpose of exhibiting the results of certain experiments to the Jury which had been made by hanging weights on the said hooks & screws to demonstrate the impossibility of the deceased hanging himself in the manner alleged by the defts. Then was the Exhibition to the Jury out of Court. in matter of Evidence pertinent to the case they were trying, produced & exhibited by them for the purpose of effecting their judgment on a question material in the case.

The accused by the proper atty of the object of its production & the use to which it was to be applied sufficiently connects this matter

(16) its exhibition

This group attempt to influence & prejudice a jury by exhibitions to them in the absence of the court Ex parte Examinations was the avowed object of the prosecution & cannot be distinguished in principal from the exhibition to them of documentary & oral evidence out of court.

A verdict obtained by such practices could be sustained in a civil case however trivial much less ought it to be supported in a case involving the life of a citizen

The last ground upon which the motion for new trial was based is that the verdict is against the evidence & law of the case will be considered ~~at the~~ hereafter.

I come next to consider the exceptions taken to evidence offered and given by the prosecution: On the trial

These relate, First

To declarations and conversations of the deceased Sophia Werner made at different times and to various persons, mainly between the departure of the prisoner from Milwaukee in December 1857. and the removal of the deceased from Milwaukee to Chicago on the 3d of March following, embracing a period of about three months before her death, during which time the deceased was living in Milwaukee and the prisoner in Chicago.

Second, The introduction and exhibition of a series of experiments, made by, and in the presence of, the jury, with hooks, ropes, screws and weights, upon a door taken from the room of the prisoner

Third, The introduction in evidence of a certain receipt given by Sophia Werner, and certain writings of the prisoner not material in any way to the issue, and avowedly offered for the sole purpose of enabling the jury, to judge by comparison of handwriting of the genuineness or forgery of ~~a certain~~ the letter purporting to be written by

deceased & prisoner.

A brief and carefully prepared abstract of the testimony of the declarations of deceased, recited & the Court in evidence is here attached, and by examination of the abstract and record on file, it will be seen that this evidence was all objected to in detail, and motions made to strike it out, all of which objections and motions were ~~overruled~~, overruled by the Court, and exceptions properly taken.

The Court adopting and adhering to the rule throughout the trial that all the declarations of the deceased made between the time when fatally shot Milwaukee and the removal of deceased from there to Chicago or at whatsoever subject were admissible in evidence, indict no rule has comprehension than the above could possibly cover the statements so admitted as will be readily seen by examining the following abstract of the evidence:—

~~Subject to which Sophia Kraus sworn to by Milwaukee witnesses relate, and date of circumstances relation to the time of departure of said Sophia from Milwaukee.~~

Minna Raabe relates conversation at time of deceased leaving - when she was going was going to sell her things - what prisoner had written to her - she ~~had money~~ said she had money $60 or $80

Eliza Raabe - said the child she had from birth to was prisoner's - said prisoner was her brother - said she left Milwaukee because prisoner wrote her to come - he had written her to stay till September or October - that prisoner had seen her in August - & why she sold her things, prisoner wrote her to do so. Prisoner had promised to marry her on her arrival in Chicago - she always told me this - she told me about selling furniture three or four days before she left.

Friedrich W. Raabe - When Sophia left, said prisoner had written her to come, and they would open business in some small town - I had conversations with her at different times, while at Milwaukee

– in their conversations she said she had received letters from Jumpsuty – she was to follow him – she was to come mild and speak to no one be – in a letter Jumpsuty begged her to sell ~~every~~ her things, and manner of selling – she said she would write to Jumpsuty for more time – would carry some things with her – cannot tell how long before she left she said she received letters from or from wife. Once in my store. Three or four weeks before she left (cannot say how long before) she said she was going to Chicago, and she and Jumpsuty would open shop – This might be two months before she left.

August Hedging – Three or four weeks before Sophia left she came to my house – she said in course of conversation she had received a letter from Jumpsuty to come to Chicago 1st of March, and to sell things – she could'nt do it. She said she had received another letter after telling her to come mild – said Jumpsuty was a smart man and didn't believe in God or religion. She had lived with her first husband, and became acquainted with Jumpsuty – she had stated she and Jumpsuty had

brother and sister became jumpsuty had told him to do so - She and jumpsuty was married by an Episcopal minister - she said the very last time she had written to jumpsuty she had written she had decided to come to Chicago - told me how much money she had - had sent money to jumpsuty to pay for it.

Elizabeth Lukas - When jumpsuty left Sophia said she wanted to follow him soon - I got a letter from Post Office for her - she said it contained good news - she could to Chicago, and jumpsuty would go with her to St. Louis. From the time she got the letter which she said contained good news to the time she sent night he them notes.

Catharine Hughes - After jumpsuty left, and upon Sophia left, I had several conversations with her - I cannot state the time - said jumpsuty was in Chicago - would write to her when to come - she was to stay in Milwaukee till July - then she was to remain with him - she told me of the letters she had received from him - she said that he had written that

12805.pdf

she was to come online &c. - that she was to tell something - he had at different times written to her to send him money, and had requested her not to show letters, but to burn them. She told what she had ~~written~~ written to Jumpertz - that she would come to see him online &c. - a letter was on the table &c.

Anna Lehmus - after Jumpertz left, I had conversation with Sophia - she said they were not married - wanted to get together - she always wanted to get to Jumpertz - she was going because Jumpertz had ~~written to her~~ sent for her - would go to St. Louis.

A small portion of this evidence relates to statements made by deceased at the moment of starting from Milwaukee for Chicago, stating her destination and motives for removing, and was admitted as part of the res gestae of that fact, and as such was perhaps admissible, except so far as they purport to state the contents of letters of Jumpertz.

The largest portion of the evidence however consists of such

conversations and declarations of the deceased made at different periods, for two months before, unconnected with any act, purporting to give the contents of various letters of Jumpertz written to deceased, and statements of deceased of her previous relations to Jumpertz and her husband, her sentiments toward Jumpertz, and past conversations between them.

The tendency of all these conversations and declarations of the deceased so admitted was evidently to prove the following facts:-

That deceased and Jumpertz had maintained a correspondence by letter since he (Jumpertz) left Milwaukee.

That deceased had had a child by Jumpertz.

That Jumpertz had induced deceased falsely to assert that he was unmarried.

That Jumpertz had at one time written her to stay in Milwaukee till fall - at another time to come to Chicago in March.

That he was her husband - and her married to her in New York

$12.00 Paid

recently, and accompanied her east—
and she owed her trouble & him.
That he did not believe in a God or
religion, but was a smart man.
That he had written to her for money
and she had sent him money.
That they (she and Jumpertz) wanted
to get together, and intended to do so;
that he had written to her to sell all
her things and come to him, and
they would go to St. Louis, and com-
mence business; & come to him se-
cretly to;
That deceased had written to
Jumpertz that she would come to
him once more, ride &c.

Now, that this evidence of the secret
and criminal marriage of defendant
with the deceased while she had a
living husband - the concealment of
that marriage - the birth of an illegitimate child - the infidel prin-
ciples of the prisoner - his seeking
to induce the deceased to come
privately to him at Chicago, under
the pretence and with the promise
of accompanying her to St Louis and
elsewhere, and his directing her to

subject are admissible evidence of the state of her mind. But recital of the contents of prisoner's letters - her statements as to his infidelity, and ~~this~~ her conduct during this cohabitation are now admissible; not to prove the facts to which they relate, but to prove the state of mind of the deceased, to which they do not relate.

The defendant proposed to prove a suicidal state and tendency of mind of one person, to wit - the deceased, by showing her temper and acts.

The prosecution, to rebut this state of mind of the deceased in advance, offered evidence tending only to show the conduct, declarations and motives of another person, to wit - the prisoner. And, throughout all the statements of the deceased above quoted, from the testimony of witnesses who proved them, not one word occurs, in the slightest degree, tending to rebut the alleged despondent temper and suicidal tendency of deceased (except, perhaps, the statement of one witness that she was of a gay temper) nor is there to be found anything which can throw the least light upon the question of

such alleged suicidal tendency.

The ~~result~~ result is simply this; the whole of this evidence has been admitted for an alleged and pretended purpose and object, which it manifestly cannot serve, - to serve and accomplish an object for which it was utterly inadmissible.

It cannot ~~serve~~ serve to rebut the alleged suicidal state and tendency of mind of the deceased, which is the pretense, but it does tend to prove the contents of the letters, and purport of conversations, and the conduct and motives of the prisoner, which was the real object of its admission.

It is respectfully submitted that this is argument neither of natural nor legal logic.

Now, the only state of mind which was in issue or material was a tendency to suicide, and upon its relation to that tendency, a state of mind alone the evidence is claimed, to be admissible upon this ground alone was it retained and put to the jury, and if any portion of it is inadmissible for such purpose, it is illegally in the case

record & alleged by the People's Counsel for the introduction of this mass of hearsay statements, so fatally prejudicial & the right of the prisoner is as follows:—

The Defendants' counsel had stated in their opening that they would show by attempts made by deceased at different times to destroy her own life; and by the manipulation by her of a gloomy and despondent temper that she was disposed and likely to commit suicide. In short they proposed to prove by legitimate and competent evidence that she was disposed and inclined to ~~commit~~ suicide. This was the only state of mind alleged by the Defendants' Counsel which he proposed to prove.

Upon this mere statement of counsel the Court assumed the ground—

First— That the state of mind of the deceased (not in relation to suicide) but her state of mind generally, that is, any state of her mind, was put in issue and become material; and

Second— That all her conversations and declarations relating to whatever

how does the rehearsal of the contents of Jumpsky's letters by the deceased to her neighbors, and her statements that she was married to Jumpsky, that he was an infidel, that she had received letters from him &c, &c, tend to show her state of mind with regard to suicide?

And yet the court below admitted and persisted in allowing this evidence to remain in the case on this ground. Now, if the evidence was admissible for this purpose — the instruction to the jury to consider the application of it to that purpose would still have the apparent subject to great danger of injustice.

For even, in such case it would be both illegal and unjust to regard it as evidence of the facts which it tends to prove, and yet he can have but slight acquaintance with the laws of mind who indulges the belief that it would fail to convince the jury of those facts, and influence their verdict accordingly. This danger might be ~~even~~ inevitable if the evidence was plainly admissible

for any purpose, - no instructions as
to the view to be taken of it, can cure
the defect if it was not, so, admissible.
Even if at the end of the trial, it had
been formally stricken out, and the
jury directed to disregard it,
we should contend that in a capital
case, after a long trial, and such
a mass of illegal evidence had been
allowed against objection to go to the
jury, and had been for many days
considered by them and become
thoroughly incorporated in their
minds with the other evidence in
the case, it ought to be fatal to
the verdict.

In this case, however, repeated
motions to strike it out were overruled,
and the whole of it expressly re-
tained, and the jury instructed to
consider it. Now, unless there is
some legal ground upon which all
all of it was admissible, there is
fatal error. The authorities cited
in the printed points, as well as
the following, are relied upon
to show that this evidence is not
admissible on part of the [illegible]

gestae of any act of the deceased proved in the case:—

Res gestae. Gunday Ev. S. 108. Lipins

" Res gestae are the unpremeditated attendant
" and incidental facts naturally appertaining
" the character" of some material fact.

Those surrounding circumstances constituting part of the res gestae may always be shown to the jury along with the principal fact.

The principal points of attention are

I. Whether the circumstances or declarations offered are contemporaneous with the main fact, mean consideration, and whether they are so connected with it as to illustrate its character. Cry of rape in Bordons case. So declarations on entry into land.

II. It is to be observed that when declarations offered in evidence are merely narrative of a past fact or occurrence, they cannot be received as proof of such occurrence. They must be concomitant with the principal act, and so connected with it as to be regarded as the same result and consequence

of the co-existing motives in order
to form a proper criterion for
judging that act. Stat. 2d Sec. 105.
declarations, to become res gestæ
must have been made at the
time of the act & close which they
are supposed to characterize, and
have been well calculated to unfold
the nature and quality of the
facts they are intended to ex-
plain, and harmonize with them
so as to form one transaction.
Case of Ford, Ewer vs Luttle 8 Crom, 250.
in re Layton, Paige 611.
Carter vs Buchanan, 3 Kelly 11, 573.

But declarations explanatory
of a previous act are not ad-
missible
Scruggs vs The State. 8 Smed. & Mash. 722.

" Angell & Ames on Corporations, Sec.
309, "The declarations of agent to
"bind the principal must be made
"at the time of making the contract
"or doing the act which he is
"authorized."
Grindley Sec. 113. "When the act of
"agent will bind the principal

"his declarations and admissions
"will bind him if made at the same
"time."
"They are then in the nature of original
"evidence and not hearsay, being the
"ultimate fact to be proved."

Story on Agency. Secs. 135 & 136.
"The representations or admissions
"of an agent does not bind the
"principal if it is not made at
"the very time of the contract,
"but on another occasion as the con-
"tract, & or if it does not concern the
"subject matter, but some other
"matter, it is not res gestae; and
"if in such case, the fact rest in
"the knowledge of the agent, his
"testimony and not his assertion
"must be used. Subsequent declara-
"tions are mere hearsay"

In Clark vs Bond. 24 Pickering 89.
Morton J. says "It is true the ac-
"knowledgments of an agent can
"never be received against his
"principal - his declarations are
"only admissible, when they are
"part of the res gestae being

[1825-08]

"part of the transaction &c."
In the case of Estes vs Great Western R.W.
8. Ont. 44,. The declarations of Adams,
the Engineer, while he was still acting
but a few days after the alleged
contract was admitted on the
trial, Wilde, J., in moving the
judgment says "It is very clear
"that the declarations are not admissi-
"ble as declarations of an agent
"are only admissible when they consti-
"a pending transaction; such dec-
"larations are part of the res gestæ"
In Rutherford vs Thompson Gen. N.P.
R. 45 = Wallace.

The declarations of
agent are admissible only when
they form part of the res gestæ of
contract.

It is insisted therefore in conclusion

First - that these declarations & conversations of the deceased are not admissible as regards either the principle or any other fact in the case because the most of them were naked statements unaccompanied by any act more narrations of past conversations between decd & Defts or of the contents of letters said to have been written by Defts to decd

Second - That they were not admissible to rebut the alleged suicidal disposition & tendencies of the deceased because they had no relation or reference to that subject but related to matters wholly foreign to the state of mind of the deceased

(10025-210)

Lastly

If the declarations of the deceased made long prior to her death naming occurrences which were already past stating the contents of past correspondence with the prisoner as well as conversations and conduct of his are admissible here it must be upon the general principle that the statements of the dec^d are admissible against the accused in trials for murder — No rule more limited will cover the evidence in this case; for ~~even if all these statements might be suppo~~ ~~sed to have same~~ the naked pretense of proving the state of mind of the deceased will avail to admit her statements upon all subjects here the same pretense can as well be made & will be equally available in all cases for the Prosecution, in trials for murder and bound to negative death by Suicide as well as all other causes of death except that alleged whether attempted to be proved by the defendant or not.

State of Illinois
Supreme Court

The People
vs
Henry Pumpfertz

Argument on
Indictment – Refusal
of Motion to discharge
prisoner – Refusal of
New Trial & Exceptions to
Statements of decision –

John Van Arman

Pumpfertz
vs
People

The ~~fourth and~~ last ground of the motion for a new trial, and the last point which I shall consider ~~under this head~~ is that the verdict is manifestly against the evidence & law of the case.

This point involves an examination of the evidence adduced on the trial.

This Examination will be facilitated by a division of the evidence into two general classes.

First — The evidence which merely tends to prove the mutilation & concealment of the body of the deceased by the Defendant.

Second The evidence which is supposed to connect the prisoner with the alleged murder

Now as the Prisoner immediately upon his arrest confessed & admitted the mutilation & concealment of the body in the precise manner indicated in the evidence and no objection has ever been made to the admissibility of his confession the examination of the evidence tending merely to prove the mutilation & concealment of the body is deemed wholly unnecessary

12625-211

Evidence ~~offd by Depts~~ tending
More to show the ~~Decapitation~~ mutilation and concealment
of the body is as follows.

All evidence on the following points may be rejected—

1 The discovery of the body concealed in a bbl. at a depot. of one of the R. Roads in N.Y.

2 The mutilations of the body. except (perhaps) the removal of stomach & the gashes in the arm

3 The evidence tending to trace back the bbl. containg the mutilated body to the Dept.

4 The purchase of the bbl. & the possn of knife saw & other tools by Dept used in cutting up body. and the delivery of the bbl. at the Mich C. Depot in Chicago.

5 The evidence tending to identify the remains as those of the dec'd (Sophie Werner.)

All the evidence upon the above points is rendered unimportant ~~important~~ by the full & open confession of the ~~Dept. of such things~~ the mutilation & concealment of the body by Dept in the exact manner indicated by the

[128 a-m-215]

= Ev

Note

The mutilations found by the new York witnesses are treated merely as a part of the evidence of concealment for it has never been suggested that they were ~~the cause of death~~ made before death or ~~made~~ for any other purpose than concealment.

And with the exception of the removal of the Stomach & Intestines (claimed by the prosecution to have been done to conceal the traces of poison) and the two gashes on the arm showing an attempt to bleed claimed by the Dep.ts Counsel as confirmatory of the Dep.ts Confession statement in his confession that when he found the deceased hanging in his room he attempted to resuscitate her) these mutilations furnish no evidence of the cause of death.

The mutilation & concealment of the body and the extinction & obliteration of the marks of the doctors instruments and method & all the evidence tending merely to show the fact & manner of the mutilation being kept out of the case

It remains to consider those circumstances claimed to have some bearing upon the cause of death of the dec^{d}.

The only circumstances which seem to have any bearing upon the cause of death are as follows

1st The removal & concealment of the Stomach and intestines by the Defts ~~before the~~

2 The alleged refusal of the ~~Defts~~ to discover the place of their concealment & his alleged equivocation about the place of ~~such~~ concealment.

3 The concealment by the defendant of the ~~deceased~~ dec^{d} on his own account before her death.

4 ~~His motives~~ The motive which he had to desire her death. including the relations arising from between them

5/12 DOS-913

5 The precautions which alleged to have been made by the Dept to ~~secure~~ obtain the opportunity to commit the deed.

Each of these circumstances the Deft = fendant has attempted either to, ~~deny~~ dispute or explain

The circumstance first above enumerated to wit the removal of the intestines & stomach from the body before ~~removal~~ the concealment of the same in the bible was fully admitted by him in his confession and it remains to be seen whether the explanation given by him is satisfactory & consistent with the rest of his statement

My explanation was in substance thus. so far as the removal of the intestines was concerned.

When he had determined to conceal the body. he considered the mode of doing it. — he was alone with the body in the 5th story of an unoccupied building in the most busy part of the city nearly every room of

which was occupied. ~~the~~ for with
no passage out except through halls
leading to the main streets & those
halls as well as the streets where
they terminated thronged with people
at all hours of the day & to a
late hour at night to remove
the body entire from the room with-
out detection was impossible.
He determined at first to cut
it up & remove it piecemeal & burn
it. — This was a work of time &
work as he could only do but
late hours in the night removing
but a small portion at a time
& working but a short time during
Each night would consume many
days. in the meantime the de-
composition of the body would betray
its presence to the inmates of
the building.

The division & dis-
section of the remains for the purpose
of removing them piecemeal had been
decided on how. would he be likely
to commence — The Stomach & in-
testines containing a large amt of
legends & soft parts would decay
decompose much earlier than the

more solid structures besides no ~~[illegible]~~ progress could be made in dividing or dissecting the trunk of the body without removing the soft parts. for containing (as they do) a large amt of liquid & the blood after death settling mainly in these cavities these would flow out when the body was cut & by their odour at once cause detection

Conceding the object of the defendant to have been ~~[illegible]~~ to remove the body piecemeal & bury it what portion would he have been most likely to remove first containing that portion which by decom=posing would first betray the presence of the horrible ~~secret, locked up in his room. object.~~ tenant of the defendant's room. The removal of the intestines first was therefore consistent with the purpose which the defendant admits and is fully explain=ed by the motives which he avows to wit the mutilation removal & concealment of the body.

It will be observed that according to the defendant's confession he ~~said~~ did not

Concieve the design of concealing
the remains in a bbl. until after
several days nor until he had ex
=perienced the difficulty of the task
he had undertaken of removing & con
cealing the body in portions as at
first attempted — In this respect
his statement is strongly corrobora
=ted by the date of his purchase
of the bbl. & his shipment of the
same in the Evidence of
Jared L. Edwards who sold him
the bbl. ~~On the 7th inst~~ at noon on March 9th
~~last~~ and Johnson & Pitts
=gerald who saw him receiving the
bbl at the Depot on the 16.
Inquiries in his confession date her
death on Sunday the 6 She was
last seen alive by Dingley the Cart
man on the evening of the 5
& begins the date accurately by a receipt
taken at Depot.

As there was no motive
for Lizzie to misstate the date of her
death no suspicion can attach to
his statement either of the time of
her death or when he conceived
the design of disposing of the
remains in a bbl.

[12 Pascals]

Three days & nights had elapsed after
her death before the defendant found
it necessary to abandon his original plan
of removing the body from the room/resi-
=dence & concealing it by burying —
during this time he says he had
taken out the contents of the abdomen
& having dried them as well as he
could and divided & worked them
in flour, carried them out of the
city, about 2 miles on the Prairie near the Lake
shore on the north side had burned
them. ~~For if this~~

After this ~~finding~~ sleeping probably that
the odour of the body would lead
to investigation & detection before
he could dispose of it he was
led to adopt the mode of con
=cealment to which he ultimately
resorted & then purchased the
old & being unable to conceal
the body in it entire ~~without mutilation~~
was compelled to mutilate it
in the manner described.

Now
if the withdrawal & concealment of
the stomach &c was consistent with
& is ~~only~~ reasonably explained by

the motive which the prisoner a-
=vows this explanation is sufficient
and must be adopted

For where
any ~~fact~~ fact or circumstance is reason
=ably consistent with the hypothe
=sis of innocence it cannot weigh
against the prisoner,

The theory
~~or fact~~ to which this circumstance
is sought to be applied is that
the decd died by poison admini
=stered by Deft ~~&~~

Now "the force & effect of all
Wills on " circumstantial evidence depend
Cir Ev " upon its incompatibility with
P 16-17 " & incapability of explanation
" or solution upon any other supposi
"=tion than that of the truth of
" the fact. which it is adduced
" to prove,"

Now the only thing which
this evidence is alleged by the prosecution ~~has any tendency~~ to support
is that the decd came to his death by poi
=son administered by the Deft & that he
removed the stomach and intestines & con
=cealed in a different manner from the
rest of the body, for the purpose of more

certainly & effectually concealing those parts which if discovered would furnish evidence of the cause of death.

The theory offered in explanation by the Dept is that having determined to conceal the remains by dividing & removing ~~the Body~~ & burying the body first must be commenced with the Stomach & intestines merely because these parts would decomposed earliest and by their odour first betray the presence of the body. - It may have some weight to add that in the case of a person some what accustomed to subsequent dissections for scientific purposes (as the Dept seems by all the evidence to be) the usual mode & order of proceeding which is uniformly to commence by removing these parts may alone furnish a sufficient explanation of the conduct of the Dept in this respect.

[illegible]

2 The alleged refusal of the Defft to reveal the place of concealment of the Stomach & intestines & cooperate in their re=Covery

This alleged refusal is in effect denied by the Defft.

The evidence upon the subject arising from the confession of the Prisoner as testified to by Bradly Rehm & Miller is merely this

Rehm says that Defft stated "that he buried the intestines away out on the Prairie one or two miles I had a talk with him next morning and offered to go with him to find the intestines he said he did not think he could find them

On his Cross Exn he says that when Defft said he buried the intestines on the Pra=irie he pointed north; and that on the next morning he said he buried them on the lake shore in the Sand & that he buried them in the night and didn't know as he could find them — This witness also swears that the Prairie north of the city extends to the lake & the Sand in some places extends back half a mile

[illegible]

Bradley testifies on this subject to the same facts. except that he says that Dunphy stated that he thought he could find them.

It is insisted by the Prosecution that the Prisoner must have known & been able to point out the place of concealment of Stomach & intestines & his refusal or unwillingness to do so. tends to confirm the inference of a mind muted for their concealment — Between two & three months had elapsed since this concealment — they had been carried (in parcels) out of the City by the Prisoner secretly at night to some point a mile or two south of the City on the open Prairie near the Platte River & buried

He had no motive at the time for marking the place of burial nor would he be likely to bury two Parcels in the same place. & having buried them in the night would not be likely to be able to find them — ~~while~~ and if he had professed to be able to & had attempted to find them & failed he might well fear that the attempt & failure would operate against him. — As to the alleged equivocation as to the place of

concealment. the only equivocation or variance alleged consists in stating in one case that he buried them on the Prairie indicating some place north of the City & on another saying that he buried them in the sand on the Lake Shore north of the City but as the Prairie on the north of the City extends to the Lake & the Sand extends back half a mile from the Lake there is no inconsistency in these statements.

3 The concealment of the dec^{d} by the Capt in his room before her death.

That the dec^{d} from the time of her arrival in Chicago on the 3^{d} of March until her death was an occupant of the Capt^{s} room is proved by the Capt^{s} confession — that he used any means or manifested any desire to conceal the fact of her presence there is only proved by the statements of Sophia Warren & witnesses at Milwaukee ~~but~~ made before her departure detailing the content of Sampsel's letters to her.

According to the direction of the Court below ~~there~~ the Jury were at liberty to consider the statements of Sophia Werner only as evidence of the state of her mind relative to the crime of suicide and could not regard them as evidence of the contents of Deft's letters or as evidence any fact in the case. — no attempt or desire of Impunity to conceal the fact of the presence of decd in his room is shown. While on the contrary it clearly appears that to several persons, at the shop where he worked he communicated fact of her presence and ~~and~~ by sending ~~another~~ the Continuer Tangley to his room to carry her things & receive his pay of her needlessly betrayed her presence to him.

The evidence in the case conclusively shows that whatever might have been his wishes in regard to the public notoriety of her presence in his premises he voluntarily communicated the fact to his fellow workmen in the barber's shop including the brother in law of the decd.

To George Warner Sept 17th and Sept 18th he showed & read passages of her letter in which she informed that she was coming & the manner of her coming & told George that she was coming in the evening train & when afterwards asked by George Warner if she was still there he instead of denying that she had been there told him she had been & left.

Without enquiring now how far this open avowal of her presence in his room to those who would be most likely to remember the fact & take an interest in her movements agrees with the alleged design ~~then~~ of secretly murdering her I only quote it at present to disprove the alleged Confinement of the deceased in his room by the Deft.

[illegible]

4 The motive which the Deft is alleged to have had to murder the dec.

~~The motive~~ Various motives have been attributed to the Defts for desiring the death of dec.

A legal marriage and criminal marriage between the Dec.d & defendant was attempted to be shown. And ~~that from a desire to~~ that from a desire to conceal the crime they was induced to murder his accomplice in it and thus silence all evidence of the fact - with this view. the the statements of ~~Defts~~ dec.d made to different persons that She was married to Defts more illegally, admitted but when it appeared by other statements of dec.d that She had denied such marriage. other motives were sought

A pecuniary motive was suggested among others

It was proved that Defts owed a sum of money on a note to a man in Milwaukee and was in need of money to pay it and it was further proved that soon after the arrival of the dec.d in Chicago. he had

bought a draft of a much larger
Amt than his pecuniary resources as shown
by the account of his deposits with
his banker would warrant and what
seemed still more suspicious the
Amt of the draft so purchased cor
-responded very nearly with the sum
of which it appeared by the state
ments of Dec'd she had in her
Resp.n And which it appeared she
had rec'd just before she started from
Milwaukee — Robbery was alleged
as the motive — but on comparing
the date of the purchase of this sus
-picious draft of the banker
with the testimony of the Cart
man Dangley who took the goods of
the dec'd to Dempsty room. both of which
dates were fixed beyond dispute
it appeared that Dempsty had
bought the draft on the morning of
Saturday March 5th & Dangley had
seen the deceased alive in her
room on the evening of the same
day. — Taking this evidence in
connection with the fact that the
money which dec'd had in her leaving
Milwaukee was rec'd from Vollert a

$12,285.22

repay & of rent which Jumpertz had paid and on sale of goods which he had bought & left in poss.n of dec.d at Milwaukee & her statement that she had sent him money before & it would seem to leave no doubt that she had voluntarily paid over to him all or nearly all the money she brought with her to meet his part on the mortgage. at all events the force of this circumstance as tending to show why & at once deranged when it appears that after Dept had the money the dec.d was still living.

The only remaining motive which has ever been alleged in argument was the desire of the Dept to terminate the relation & intercourse between him & dec.d & to free himself from a connexion which had become distasteful & in this connexion a desire on his part to contract marriage with another woman was sought to be established

In determining the existence & force of this motive & deciding whether it would

(12 P.M.)

be likely to induce the defendant to perpetrate a murder let us consider the history of the relation between the Deft & dec.d & the conduct of Dampeny during its continuance

Their Relations had always been agreeable — he had to use his own words stood by & supported her through child birth bought furniture rented house & incurred expense on her account — she does not appear to have been accustomed to baulk his inclination or dispute his will — it clearly appears by the evidence of the Milwaukee witnesses &c by defense that altho she desired him to marry her she alleged no obligation on his part to do & did not blame him because he refused & his language when asked by one of his employers to marry her as well as her language when his refusal was communicated to her shows that she was prepared to acquiesce in his wishes & that their mutual friendship was unimpaired

He was unmarried & could leave her if he chose to

5. The preparations alleged to have been made by Defd to commit the murder.

These as alleged by the Prosecution in the Court below consisted in
1 Taking the room which he occupied in Pomeroy & B.C.

2 Preparing the instruments to cut up & conceal body,

3 Procuring the deceased to come down to Pomeroy to his room &

4 Forgeing a letter in advance of her arrival calculated & intended to support the statement that she had committed suicide

1st The room taken by the defd. was taken long before deceased came in the expectation that it would be shared by George Brewer with him as a sleeping room - it is in the 5th story of a building standing in the most public place in the city the building swarming with 30 or 40 tenants with a janitor having keys to every room & accustomed to enter them at all times

12825-201

This was a most unusual measure of preparation to commit a secret murder

2 The instruments in his room were such as he had always had & such as are usually kept for innocent purposes

3 The accused stated that Dunphy had written to her to come to him but she also stated that she had always decided to come & the whole evidence shows that she came of her own accord as soon as she could obtain his consent. and his desire that her presence there should be concealed from the public & especially the nuns of the building is explained by the character of their intercourse & the conditions of his lease. & he showed no further desire of secrecy than to conceal the fact from the public for he ~~told~~ communicated it freely to his associates & the friends of the [illegible] as before stated.

4 As to the forgery of the letter by Deffit to be used as evidence of suicide it must only be replied that we are entirely willing to leave the question of the guilt or innocence of the accused to depend on the genuineness of that letter. — Supported by the testimony of three witnesses unimpeached by none bearing internal evidence of authenticity which can leave no possibility of doubt the prosecution did not dare in the court below, directly to dispute its genuineness — The receipt of this letter is proved by Deffit Lutz Rabbata & the editor of the German paper & its tone & the peculiar expressions recognized by all the unbiassed witnesses — all the Defts. Counsel desire is that the Court will read the evidence in the abstract upon this subject & carefully peruse the letter

[12 pages]

Having thus attempted to show that all of these alleged criminating facts so far as they are established are consistent with ~~and~~ the innocence of the prisoner & are all accounted for & explained by the acknowledged design & intention of the Dept to conceal the body. I come next to consider the main and as I contend the only criminating fact found in the case.

The mutilation & concealment of the body —

Shocking and horrible as the ~~mutilation conduct of the~~ mangling & mutilations of the body, discribed by the medical witnesses may from ~~were~~ x that they were inflicted on a lifeless body; & ~~designed merely~~, done merely for the purpose of concealment, has never been denied or questioned & it is here assumed will be conceded here.

The mode of concealment adopted by the Dept was evidently the only mode possible in his situation — The measures taken to effect such concealment can add nothing to the mere fact of concealment. Cheap as it may

[illegible]

he alleged to show a lack of sensibility
upon the the dispt.

Now. it is matter
of common experience and observation
that persons who in the course of their studies or avo-
=cations have become accustomed to
handling & dissecting human remains
loose much of that sensibility which
which most persons feel in the presence
of the dead &c — The pros. lay
Supt of surgical instruments his
passport describing him as a Sur-
=geon and his own confession showing
that he was connected with the this
a hospital & had in some degree
a medical education makes it
probable that he had by the latter of
his life become in less sensitive sense
=ble to the horror and disgust refused
and horror commonly experienced in the
presence of human remains

At all
events as this feeling is not universal and
its absence does not necessarily imply, nor
=d obliquity the fact cannot in
a Criminal case be taken against
the prisoner.

(1282-290)

But the fact of the mutilation and concealment of the remains is fully conceded by the prisoner nor can it be denied by his counsel that this is a criminating fact - It remains to ascertain its proper weight & value as an indication of guilt and to determine whether
1st if unexplained it would justify a conviction of murder &
2 whether the evidence in the case affords any explanation consistent with innocence.

Upon these questions the Defts counsel will only enumerate briefly the circumstances & considerations apparent in the case which tend to confront & tend to rebut the conclusion of guilt

1 The uniform good character of the decd Deft
2 His friendly disposition & uniform kindness to the deceased
3 The lack of any apparent motive to disire her death
4 The absence of any evidence of the Defts use of poison by the Deft which is the only means of death consistent with the theory of the Prosr or the alleged criminating circumstances

5 The improbability of ~~his poisoning her~~ her dying, slowly by poison in the Deft.^d prem-ises surrounded by thirty or forty people without any discovery

6 The improbability of Deft committing the murder under such circumstances of almost certain detection

7 The communication of the fact of the presence of deceased in his room at the same time he was planning her destruction

8 The probability of her suicide ari-sing from her misfortunes & her repeated threats and attempts to destroy her life as well as from the letter written by her to Gumpert.^s but a few days before her arrival

9 The agreement & correspondence of the post mortem appearances with the supposition of death by suicide & the particular confirmation they afford to the statement of Deft in his confession relative to bleeding her.

Supreme Court

3d Grand Division

~~The people~~

Henry Jumpertz

vs

The people &c

upon a writ of Error -

E. W. McConay & John Van Armand.
for Jumpertz -

The above party Henry Jumpertz, avers that there are manifest errors appearent in the record of said cause, to his prejudice, sufficient to reverse the same, ~~among which errors he assigns~~ The following -

1st It does not affirmatively appear, that the indictment was Ever acted upon & returned into Court by a grand jury - nor does record shew it a "true bill"

2nd " It appears from the record affirmatively That the indictment if found at all, was at a Court of an impossible date, To wit in June 1859.

3d The Court erred in Continuing the cause at the Nov. Term 1858 - ~~in the absence~~

4th The Court Erred in Continuing the cause at the at Nov. T. 1858, in the absence & without the Knowledge or Consent of prisoner or his Counsel

(12 Pac. 728)

2nd "

5th The Court Erred, in Not discharging the prisoner at its Nov. T. 1858.

6th Also, in overruling each & all of the prisoners Motions for a discharge filed at the January Term 1859.

7th The Court erred in overruling the prisoners Motion for a Continuance at the Jany. T. 1859.

8 The Court Erred in permitting the prosecution to prove any and all of the Conversations of Sophia Werner, in the absence of the prisoner,

9th Also, in permitting prosecution to prove the Conversations of Sophia Werner, held in absence of prisoner, detailing past events, the contents of the letters of prisoner, & his religious belief &c-

10th The Court erred in Not excluding such Conversations from the Jury upon Motion of prisoner,

11th The Court Erred in permitting oral evidence to prove the contents of prisoners letters to deceased and the draft sent by him to Milwaukee, and in permitting Mr. Raab to prove orally the Mode of Spelling the Name of "Henry" on the letter Mailed by him to prisoner from Sophia Werner- There being no proper foundation for any such Oral Evidence.

[128 S. 23]

People
vs
Jumpertz

Assignt. of Errs

Printed by Jameson & Morse, 14 La Salle street.

STATE OF ILLINOIS, SUPREME COURT.

THE PEOPLE, Defendants in Error
ads.
HENRY JUMPERTZ, Plf. in Error.

Brief and abstract of argument on behalf of the People, defendants in error.

Among the numerous errors assigned upon this Record in arrest of judgment and for a new trial, those most material will be noticed in the following order:

1.—The refusal to discharge the defendant from further prosecution on the indictment.

2.—Overruling the defendant's application for continuance.

3.—The admission of improper evidence.

4.—The experiments upon the door of defendant's room with hooks and screws.

5.—The misconduct and separation of the jury.

6.—The verdict against the evidence.

First.—The refusal to discharge the defendant from further prosecution on the indictment.

Two continuances were granted on the application of the People, one at the June term of circuit court, 1858, one at the September term of Cook county court of common pleas, the cause having gone there by virtue of statute passed.

Concerning venue where parties are in custody in either of said courts at the end of any term thereof, and by the same statute the cause came back to the circuit court at the regular November term, 1858, when it was continued by the court, with *all the other* criminal business to the January term, 1859, specially called for criminal business. The prisoner and his counsel, learning soon after said order and during said term that it was made, expressed no dissatisfaction with said order—*p.* 3. *Ab.; R. p.* 18.

The propriety of said refusal to discharge, involves the construction of *Sec.* 9, *Habeas Corpus Act*, 1 *Purple, p.* 607.

Had the defendant appeared at said Nov. term of circuit, and demanded a trial, the court would undoubtedly have granted him a trial.

The defendant, if he had any rights, *expressly waived them*, which he might do.

The People v. *Scates*, 3 *Scam.*, 353.
McKinney v. *The People*, 2 *Gil.*, 540.

Second.—Overruling defendant's application for continuance.

1—No diligence was used.

2—The evidence was not material.

3—The witnesses were beyond the jurisdiction of the court.

4—And were produced by the prosecution.

Third.—The admission of improper evidence, to wit: the declarations and conversations of the deceased, to and with divers persons, from the time defendant left Milwaukee, December, 1857, to the time deceased left to come to Chicago, March 3, 1858.

It will be seen by reference to abstract, p. 12, that the defense admitted their intention to prove a *tendency* in the deceased to *commit suicide*, and did not object to the *order* of the evidence offered.

And by the instruction of the court, given to the jury before the argument that these declarations and conversations of the deceased were only to aid the jury in forming an opinion as to the state of, and condition of the mind of the deceased, and for no other purpose whatever. See record, p. 321

Upon an inquiry as to state of mind, sentiments or disposition of a person, at any particular period his declarations and conversations are admissible.

1 *Green, Ev.* § 108; *Gilchrist* v. *Lale*, 8 *Wats.*, 355.
Lateman v. *Lailey*, 5 *T. R.*, 512.
Larthelemey v. *People, &c.*, 2 *Hill, N. Y.*, 248, 257.
State v. *Sharp et al.*, 1 *Peters, C. C. R.*, 118.
State v. *Thomas Crank*, 2 *Lailey*, 66.

Fourth.—The experiments upon door with hooks and screws.

These experiments involved no question of science or skill, and the jury might as well see the experiments as to learn the result of experiments made out of their presence—both of which would be proper.

Vaughen v. *State*,
3 *Smeed and Marsh*, 553.
Colt v. *The People*,
1 *Parker Crim. R.* 612-625.
Burrel Cir. Evidence, 691.
Colt v. *People*, 3 *Hill.*

Fifth.—The misconduct and separation of jury, as shown by the affidavits of officers having charge of the jury.

The judge certifies that on the trial of this cause, it having been brought to his knowledge, that there was extreme necessity for the presence of one of the jurors named Loomis, at his own house, on account of serious illness in his family, ordered one of the officers in charge of the jury to attend said juror to his house, &c. See certificate in record, p. 90-91

The mere separation or misconduct of the jury will not vitiate their verdict, and to vitiate, *reasonable suspicion of abuse must exist.*

State v Engles
13 Ohio 490-3
15 Ohio 72
Wilson v Abrahams
1 Hill 207
State Court v Babcock
1 Conn 401-
U. S. v Gibert et al
2 Sumner
People v Camelle 21
1 Parker 25-6-61-

State v. *Hester*, 2 *Jones*, 83.
McCarter v. *Commonwealth*, 11 *Leigh*, 633.
Porter v. *State*, 2 *Ind'a*, 435.
The State v. *Anderson*, 2 *Bailey*, 565.
State v. *Prescott*, 7 *New Hamp.*, 287.
Com. v. *Roby*, 12 *Pick.*, 596.
State v. *Miller*, 1 *Dev. & Bat*, 500.
State v. *Tilgham*, 11 *Iredell*, 513.
State v. *Lytell*, 5 *Iredell*, 58.
Thomas v. *Common.*, 2 *vig. cases*, 479.
Kennedy v. *Comm'th*, 2 *Verg Cases*, 510.
Barlow v. *State*, 2 *Blackford*, 114.
Davis v. *The People*, 19 *Ill.*, 74.
McKinney v. *The People*, 540.
W. A. C. L., *p.* 644-6.

Sixth.—Verdict against the evidence.

Synopsis of the facts proved by prosecution.

Jumpertz became intimate with Sophie at Chicago, in 1856, and forms an adulterous connection with her, which is continued in Chicago until Sophie becoming *enciente*, the parties go to Milwaukee in the summer of 1857, where they first pass as brother and sister, and finally, upon the birth of the child, as man and wife.

In Dec. 1857, about two weeks before Christmas, Jumpertz returns to Chicago and engages with Ribola & Fraza, barbers, under the Matteson House. But before leaving Milwaukee, Jumpertz *paid rent six months in advance and up to July*, 1858, and provided provisions and fuel for Sophie, and told her *that she must not follow him.*

Jumpertz, from Dec., '57, to the latter part of February, '59, boards at a private house in Chicago. On the 19th Feby., '58, Jumpertz takes a lease of room No. 30, 5th story of Pomeroy's Building, on Water street.

Sophie stays in Milwaukee, takes washing; Jumpertz hears from her; she is doing well, he writes to her to stay.

Suddenly and contemporaneously with the hiring of room *No.* 30 by defendant, she talks to her friends in Milwaukee of coming to Jumpertz; disposes of furniture, gets repayment of rent, $20, which Jumpertz had paid, and on third of March takes the afternoon train for Chicago.

Jumpertz, before her arrival some days, produces a letter claiming that it was from Sophie: "She wants to kill herself; that he will keep it; *that it will be good for him if he should get into trouble with Sophie.*"

Jumpertz has written to Sophie to come—"to come right to his room —to come on evening train—so that *nobody* know she be with him."

On the 3d March Sophia left Milwaukee with two trunks rocking-chair and bundle, and some $60 in money, on the afternoon train.

On the evening of the 4th of March, a drayman delivers these goods by the direction of Jumpertz, given at the Milwaukee depot, into Room No. 30 Pomeroy's building, in 5th story, and a woman resembling Sophie Werner, pays the drayage, 50 cents, in that room.

On the 4th of March, Jumpertz makes a deposit of $53 at Hoffman & Gelpcke's and buys draft on 5th for $71.25 of same parties.

On the 9th March, Jumpertz buys a whisky barrel on Water street, and on 16th ships the same barrel at the Michigan Central Depot, addressed to W. H. Jennings, Leonard street, N. Y. City.

On the 2d April, 1858, at the Hudson River Rail Road Depot, N. Y. City, the whisky barrel is found containing mutilated remains of a female, the head severed from the trunk, the abdominal cavity laid open, and all the lower viscera, *including stomach*, liver, pancreas and uteras gone, the hair cut short, the lower extremities mutilated, and slight cut on the right arm at the bend of the elbow; inquest held, barrel and head preserved, and the remains buried by the coroner, and suspicion directed to Jumpertz—officers visit room No. 30, find articles of property of deceased, and saw, hatchet, lancet, chisel with appearances of blood, in the room of defendant.

On the 5th of May, Jumpertz is arrested for the murder of Sophie Werner, and makes his statement of his connection with the body of the deceased.

In June, the trunks of the deceased, containing her wardrobe and likenesses of Jumpertz are found in Lowell, Mass., directed to Mrs. Ebert, by the defendant, and with Mrs. Ebert the "Carolina letter."

The trunks and barrel containing the mutilated remains are brought to Chicago, an inquest is held, the body identified as that of Sophie Werner, the barrel as the one purchased and shipped by defendant, the trunks and contents as the property of Sophie.

On the 1st April, Jumpertz wrote a letter to Mrs. Ebert, the woman to whom the trunks were sent, soliciting her mediation in his behalf *for Carolina.* He says, "I have a matter of *great importance to me.* It is now two years since I came to Chicago, and I feel *very lonesome.* I have no friends and no acquaintances at all and don't wish for any. *All my thoughts day and night are with Carolina. I never forget her.*"

Jumpertz, before sending off the trunks, examines the contents, and *burns all the letters* except the one preserved, and said to contain the *intention of suicide*, the one exhibited to George Werner and others at the barber shop, and claimed by prosecution to be forgery.

Jumpertz said to Mohr that he had settled, arranged or ended with Sophie." Similar statements to Mœchel and others, between the 9th of March and his arrest.

Defendant stated to Miller, Rehm and Bradley, the night of the arrest, that he buried the stomach and intestines out on the prairie—*thought he could find them.*

An offer was made by Marshal Rehm to go with defendant to find the remains, the morning after the arrest. Defendant declined to go—said he *could not* find them.

Subsequently sends for his friend Dr. Hahn, and *says to him*, they are trying to make out out that Sophie was *poisoned*, &c., and tells Hahn that he thinks he could find them, and wants to know if they could *find poison* so long after death.

Defendant, in confession, states that on Sunday noon he came from the shop and found deceased hanging upon the door of his room by a large cotton rope.

That deceased left a note to him bidding him good bye, which blew out of the window.

Although the defendant produced to George Werner and others, the letter claimed to be from Sophie Werner, and to threaten suicide, yet after finding her, as he says, dead by her own hands, he conceals the suicide, not only from the authorities, but from those to whom he had shown the letter, and also conceals the fact that she had been in his room.

The defendant not only conceals the death, but so disposes of the remains as to conceal *the cause* of death.

Although the defendant claims that deceased came here on the 3d of March to bid him good bye to go to her husband at Rochester, yet on the 4th of March, three days before the alleged suicide, he appropriates her money to his own use.

The defendant, in his confession, says that Sophie wrote to him she wanted to die, and did not want to die alone, that he wrote to her to come—to come right to his room, so that no body would know that she was with him.

The medical testimony is, that the *cause* of death of deceased could not be ascertained from a *post mortem* of the body in the condition in which it was found in New York. The *post mortem*, then, does not favor suicide by *hanging*.

There was no physical evidence of hanging in the case—the hooks were not bent—the door was not indented—the rope was destroyed—and the *stomach*, *liver* and intestines, the only parts that could disclose the presence of poison, were removed by the prisoner and withheld.

Carlos Hause

Prosecutor

13-200-

Jumpertz
vs
The People

Defts Brief

Filed May 17, 1887
L. Leland
Clerk

SUPREME COURT.

HENRY JUMPERTZ, vs THE PEOPLE, &c. } Upon Writ of Error.

McCOMAS & VAN ARMAN, FOR JUMPERTZ.

Points made and authorities cited by Counsel for Henry Jumpertz, Plaintiff in Error:

1st. It should appear affirmatively in the record that the indictment was acted on and returned as a true bill in open court, by the grand jury, and the record should have shown that it was *recorded* "a true bill," which was not done in this case. Sec. 1, Chit. C. L. 324; Wharton 181; 2 Va Cases 527; 8 Yearger, 166; 7 Humph. 155; 3d Scam. 85; 3 Gilman 71; 2 Gilman, 540; 4 Scam. 340; 2 Gilman 551.

The record shows a presentment & this answers the requirements of the law — When the indictment was presented and filed in court it became a part of the law it was placed at large upon the record —

2d. The court at which the indictment was filed was of an impossible date, and therefore of no date.

18.

Sampson
vs
Peoples

Plaintiff's Points

Filed Aug 14, 1859
L. Delamel
Clerk

McComas & Van Arman

3d. The court had no right to continue the cause at the November term 1858. The statutes of 1845, chap. 17, sec. 9, forbids a continuance beyond the third term, in a case like this. It was also obvious error to continue the cause in the absence of the prisoner and his connsel, and without their knowledge or consent. See 4 Gilm. 114; 14 Ill. 500; 3 Rob. Prac. 178 "That a person accused of felony must be arraigned in person, and plead in person. It is required in like manner, that he shall appear in person *in all the subsequent proceedings*, and the fact of his having *personally attended must appear by the record*."

Scatis cumpilatum -
Although the prisoner had may
have had the right to have
applied for and obtained a disch
- arge still it dont follow that
the law intended for it to operate as a
bar -

4th. The prisoner was entitled to be discharged under his motions, filed at the January term, 1859. Rev. Stat. 1845; chap. 17, sec. 9

5th. The prisoner having shown good cause for a continuance at January term, it was not competent for the court to trust to the *promises* of the opposite party. Nothing short of an absolute admission of the facts proposed to be proved by the absent witnesses, could justify the court in forcing a trial. Willis vs People, 1 Scam. 402.

6th. *Admissions of Deceased.* Recitals of *past occurrences* can never be *res gesta*. 1 Greenleaf, sec. 110. They were admissible, if at all, for the sole purpose of proving state of mind *as to suicide*, and declarations having no *tendency* to prove the state of mind on *that subject* were illegal.

7th. Oral evidence of written documents and papers is not admissable, unless their non-production is sufficiently accounted for.

8th, That there can be no experiments made in the presence of the jury, against the prisoner's consent, and that if experiments were made they should alone be made with identical or similar materials. The only evidence, if any could be admitted, on the questions experimented on, was that of experts. See 15 N. H. 112; 2 Phil. Ev. 290; 7 Verm. 153—116; 3 N. H. 349—365; 3 Yates, 527—544; 9 Bing. 333; 17 Wen. 137—161; 1 Paine Cir. Ct. R. 539—546; 12 Iredel 151; 2 Ohio (No. S) 524.

9th. The present rule of evidence will not permit a paper in the handwriting of a party to be put in evidence for the sole purpose of comparison. See 7 Car. and P. 695, Hawkins vs. Grimes, 13 B. Mon. 258; Outlaw vs. Hurdle, 1 Jones Law, (N. C.) 159.

10th. That the receipts of Sophia Werner and Charles Quentin & Co. were "*res inter alios*," and not evidence.

11th. That the absence of the witnesses, Theobold, Davis & Fisher, is sufficient ground for a new trial, on the ground of surprise and accident.

12th. That the exhibition of the door with exparte experiments, was such misconduct and unfairness as entitles prisoner to new trial.

13th. The separation and misconduct of the Jury were such as requires the verdict to be set aside. See McCauls case 1 Va. cases 301; Thomas case 2 Va. cases 479; Organ vs. State, 26 Miss. (4 Cushm.) 78, Overbee v. Com. 1 Rob. 756; Case in 12 Pickering 496; McLane vs. State 10 Yearger 241; People vs. Ransom, 7 Wend. 423 State v. Prescott, 7 N. H. 290, State v. Miller 1 Dev. & Batt 500; People v. Douglas 4 Cow. 26; McKinney v. People, 3 Gilm. 555.

14th. That it was either error to allow the declarations of Sophia Werner to go in evidence for all purposes, during the trial and then instruct the Jury to disregard them except as to her state of mind; or it

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

To the Clerk of the Circuit ——— Court for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court Court of Cook — County, before the Judge thereof, between The People of the State of Illinois ———

plaintiff, and Henry Jumpertz ———

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

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

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 27th ——— day of April ——— in the Year of Our Lord one thousand eight hundred and fifty-nine.

L. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

Henry Jumpertz
vs
The People of the State
of Illinois. —

Writ of Error

This writ of Error is
made a supersedeas
and as such is to be
obeyed by all concerned.

L. Leland Clk
by J. O. Rice Deputy

Filed April 27. 1859
L. Leland
Clerk

was such unfairness in effect as should have given the prisoner a new trial, as it was impossible that the Jury could obey the instructions of the court and erase from their minds of the effect already made and remaining there for days.

15. That the verdict is clearly contrary to the law and the evidence in the cause.

McCOMAS & VAN ARMAN,

For Plff. in Error.

13 – 200 –

Jumperty

vs

The People of the State of Illinois

Cliff Point

Filed May 14, 1859

L. Leland

Clerk

12825

4th

18th The Court Erred in permitting the prosecution to prove by the Witness Eby Oral Evidence & in fact any evidence at all the Contents of the book account opened with Hoffman & Gelpcke, by Prisoner, — The time it was opened and also in allowing him in like Manner give oral evidence of the Contents of a written draft sold by the said Hoffman & Gelpcke to Defendant.

19— The Court erred in ~~refusing to grant~~ giving Each and all of the instructions asked by the prosecution

20th The Court erred in refusing to grant the defendant a new trial.

21st It was Error to permit the Statements of Sophia Werner to go to the Jury for all purposes & remain there for days & then instruct them only to regard it on question of her State of Mind.

McComas & Van Armand
for Pff. in Error

18. PD.

Assignment of Errors

12825

Filed May 14. 1859
L Leland
Clerk

State of Illinois } Supreme Court thereof
3rd Grand Division
April Term A.D. 1859

Henry Jungferty }
vs } On Error. -
The People &c }

And now come the said People. and say. that there is no Error. nor Manner of Error. either in the said Record. or Proceedings.

Wherefore they pray that said Judgment may in all things be affirmed. and they obtained their costs in this behalf. &c -

Carlos. Haven. &
W Bushnell - for
People.

S128252497

Supreme Court
13
April Term
A.D. 1859

Henry Jennings
vs
The Penfield

Joinder in Error

Filed May 17. 1859
L. Leland
Clerk