


No. 12921

Supreme Court of Illinois

Thomson

vs.

People

71641  7

IN THE SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, APRIL TERM, A. D., 1860.

ROBERT C. THOMSON,
Plaintiff in Error.

vs.

THE PEOPLE,
Defendants in Error.

ERROR TO STEPHENSON.

Page of Record

This was an indictment for false pretences. The bill of indictment was found in the Stephenson Circuit Court, at the September Term, A. D., 1859, and is in the words and figures following, to wit:

"STATE OF ILLINOIS, } *Of the September Term of the Stephenson County Circuit*
 } *ss. Court, in the year of our Lord one thousand eight*
 } *Stephenson County. hundred and fifty nine.*

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The Grand Jurors chosen, selected and sworn in and for the said County of Stephenson, in the name and by the authority of the people of the State of Illinois, upon their oaths present: That one Robert C. Thomson, late of said County, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty-nine, in the said county of Stephenson, knowingly and designedly devising and intending by unlawful ways and means to obtain and get into his hands and possession the choses in action, money, goods, wares and effects, and other valuable things of the good people of this state, and with intent to cheat and defraud one Levi Lucas, late of said county, the said Levi Lucas then and there being of unsound mind and memory, did then and there unlawfully, knowingly and designedly, falsely pretend and represent to the said Levi Lucas, he, the said Robert C. Thomson, then and there knowing that the said Levi Lucas was of unsound mind and memory, that he, the said Robert C. Thomson, was then and there a person of knowledge, ability and skill in the art and science of surgery, and eye and ear doctoring business, and eclectic medical science and practice; and that he, the said Robert C. Thompson, was then and there well able and qualified to teach and impart the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice to the said Levi Lucas, and that he, the said Levi Lucas, was then and there able and competent to learn and acquire the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice, and that he, the said Robert C. Thomson, was then and there engaged in the practice of surgery and eye and ear doctoring business, and eclectic medical practice, and was then and there doing therein a large and remunerative business, the avails of which business then and there amounted to from twenty to thirty dollars per day; and that he, the said Robert C. Thomson, then and there intended to take, and would take the said Levi Lucas into co-partnership with him, the said Robert C. Thomson, in the art and practice of surgery and eye and ear doctoring business and eclectic medical practice; and that he, the said Robert C. Thomson, then and there intended to teach, and would teach the said Levi Lucas the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice. And the said Levi Lucas then and there believing the said false pretences and representations, so made as aforesaid by the said Robert C. Thomson, and being of unsound mind and memory, and he, the said Robert C. Thomson, then and there well knowing that the said Levi Lucas was then and there of unsound mind and memory, and he, the said Levi Lucas then and there relying upon said false pretences and representations, and being deceived thereby, was then and there induced by reason of, and by means of the said false pretences and representations, so made as aforesaid, to deliver, and did then and there deliver to the said Robert C. Thomson, a certain deed from one Jacob Mohr, to the said Robert C. Thomson, and the lands therein described, of the value of eighteen hundred dollars, said deed being of the following described real estate,

4. *1st*
5. *1st*

to wit : Being part of lot number four, in block number forty-nine, in the original town (now city) of Freeport, in said county, according to a plat of said city now on record in the office of the Clerk of the Circuit Court of said county; and the said land being more particularly described in a certain deed made by one Jacob Mohr to the said Robert C. Thomson, and bearing date the nineteenth day of January, in the year of our Lord one thousand eight hundred and fifty-nine, and recorded in the office of the Clerk of the Circuit Court of said county of Stephenson, in book twenty-seven of Deeds, on page three hundred and eighteen; and also by reason of and by means of said false pretences and representations, and then and there relying upon the said false pretences and representations, the said Levi Lucas did then and there deliver to one Jacob Mohr, at the request of the said Robert C. Thomson, and for his sole use and benefit as payment for the land described in the said deed above mentioned, two promissory notes, made by the said Levi Lucas to the said Jacob Mohr—one of said notes of the value of eight hundred dollars, being for the sum of eight hundred dollars, payable in one year from the date thereof, and ten per cent. interest; and the other of said notes of the value of one thousand dollars, being for the sum of one thousand dollars, payable to the order of the said Jacob Mohr, two years after the date thereof, and ten per cent. interest, and both of said notes bearing date the nineteenth day of January, in the year of our Lord one thousand eight hundred and fifty nine; and the said Robert C. Thomson did then and there, on the said twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty nine, at the said county of Stephenson, well knowing that the said pretences and representations were false, unlawfully, knowingly and designedly, by means of said false pretences and representations, obtain the said deed, and the said notes of the said Levi Lucas, and with intent then and there to cheat and defraud the said Levi Lucas of the same; whereas, in truth and in fact, the said Robert C. Thomson was not then and there a person of knowledge, ability and skill in the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice; and whereas, in truth and in fact, the said Robert C. Thomson was not then and there well able and qualified to teach and impart the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice to the said Levi Lucas; and whereas, in truth and in fact, the said Levi Lucas was not then and there able and competent to learn and acquire the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice; and whereas, in truth and in fact, the said Robert C. Thomson was not then and there engaged in the practice of surgery and eye and ear doctoring business, and eclectic medical practice, and was not then and there doing therein a large and remunerative business, the avails of which business then and there amounted to from twenty to thirty dollars per day; and whereas, in truth and in fact, the said Robert C. Thomson did not then and there intend to take, and would not take the said Levi Lucas into co-partnership with him, the said Robert C. Thomson, in the art and practice of surgery and eye and ear doctoring business, and eclectic medical practice; and whereas, in truth and in fact, the said Robert C. Thomson did not then and there intend to teach, and would not teach the said Levi Lucas the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice. And so the jurors aforesaid, upon their oaths aforesaid, do say that the said Robert C. Thomson, by means of the false pretences and representations aforesaid, on the said twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty-nine, in the said county, unlawfully, knowingly and designedly by means of said false representations and pretences, did obtain from the said Levi Lucas, the said deed, lands and notes in the manner and form aforesaid, with intent then and there to cheat and defraud the said Levi Lucas of the same, against the form of the statute in such case made and provided, and against the peace and dignity of the same people of the State of Illinois.

8th9th10th11th12th16th

AND the jurors aforesaid, upon their oaths aforesaid, do further present that the said Robert C. Thomson, on the eleventh day of January, in the year of our Lord one thousand eight hundred and fifty-nine, at said county of Stephenson, devising and intending by unlawful ways and means to obtain and get into his hands and possession the choses in action, money, goods, wares, chattels, effects, and other valuable things of the good people of this state; and with intent to cheat and defraud the said Levi Lucas, did then and there knowingly and designedly falsely pretend and represent to the Levi Lucas (he, the said Levi Lucas, then and there being of unsound mind and memory, and he, the said Robert C. Thomson, then and there well knowing that the said Levi Lucas was of unsound mind and memory) that he, the said Robert C. Thomson, was then and there a person of knowledge, ability and skill in the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice, and able and qualified to teach and impart the same to the said Levi Lucas; and that he, the said Levi Lucas, was then and there able and competent to learn and acquire the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice; and the said Levi Lucas then and there believing the said false pretences and representations, so made as aforesaid by the said Robert C. Thomson, and being of unsound mind and memory, and the said Robert C. Thomson then and there well knowing that the said Levi Lucas was of unsound mind and memory, and the said Levi Lucas then and there relying upon said false pretences and representations, and being deceived thereby, was then and there induced by reason of; and by means of the said false pretences and representations, so made as aforesaid to make and deliver, and did then and there make and deliver, to the said Robert C. Thomson, one promissory note for the sum of two hundred dollars, and of the value of two hundred dollars, dated Freeport, January the eleventh, in the year of our Lord one thousand eight hundred and fifty-nine and payable six months after the date thereof, with ten per cent. interest from the date thereof, and payable to the said Robert C. Thomson or order. And the said Robert C. Thomson did then and there on the said eleventh day of January, in the year of our Lord one thousand eight hundred and fifty-nine, at said county of Stephenson, well knowing that the said pretences and representations were false, unlawfully, knowingly and designedly, by means of said false pretences and representations, obtain the said note of the said Levi Lucas; and with intent then and there to cheat and defraud the said Levi Lucas of the same; whereas, in truth and in fact, the said Robert C. Thomson was not then and there a person of knowledge, ability and skill in the art and science of surgery and eye and ear doctoring business and eclectic medical science and practice, and able and qualified to teach and impart the same to the said Levi Lucas; and whereas, in truth and in fact, the said Levi Lucas was not then and there able and competent to learn and acquire the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice. And so the jurors aforesaid, upon their oaths aforesaid, do say that the said Robert C. Thomson, by means of the false pretences and representations aforesaid, on the said eleventh day of January, in the year of our Lord one thousand eight hundred and fifty-nine, at said county of Stephenson, unlawfully, knowingly and designedly, by means of said false pretences and representations, did obtain the said note in the manner and form aforesaid, with intent then and there to cheat and defraud the said Levi Lucas of the same, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same people of the State of Illinois."

And afterward, on the 20th day of September, 1859, the defendant by his counsel, filed in said court his motion to quash the indictment in said cause.

And afterward on the 24th day of September, 1859, it being of the said September term, 1859, of said court, came on to be heard the defendant's

16th

motion to quash the indictment, which said motion was overruled by the court, and to which ruling of the court the said defendant then and there excepted.

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And afterward, on the 5th day of January, 1860, it being of the December Term, 1859, of said court, said cause came on for trial, and one Hiram C. Best was called as a juror in said cause, and being examined under oath, touching his qualifications as a juror, said: "I conversed with a witness in this case," and "formed an opinion as far as I heard." "I believed what I heard." "I have not formed an opinion as to the guilt or innocence of the prisoner." "I formed an opinion as far as I heard." Whereupon said juror was challenged by the defendant for cause, but the court decided that the juror was competent, and refused to allow the defendant's challenge, to which ruling of the court the defendant then and there excepted.

Whereupon on the day and year last named, a jury came, &c., and were duly elected, tried and sworn to try said cause, and the following evidence was adduced by the prosecution.

26th

Levi Lucas.—Have known defendant something over a year; first acquaintance was, I took one of my children to be doctored for a sore eye. It was a year ago last summer, about harvest time; the first time we went he gave me some medicines, and we went back. Second time we went there, he said he could not cure the child right away, on account of sickness of the mother. He said he must doctor the mother awhile, and gave my wife some medicine. Thomson told me he could put me in a way of making an easier living than I was doing, by coming in with him, if I would come and learn his business. The second time I was there was in September or October, 1858. The time of the above conversation was the second or third time I went into his office; said he would ask me \$400 for learning it; told him I could not come at that time; said then I should wait and come some other time; was not there again to stay any time until late in December; told him before I commenced to study that I thought I was too old to learn it. He told me that I could get an easy living without hard work; that he was making \$30 or \$40 per day; that I could make an independent living. I said I did not want to take hold unless I could make a living; he said I could learn it; that he had known persons to learn the business in a very short time; said he would learn me the eye and ear business; he would charge me \$400, and I could earn that amount before my notes became due. The first note was given in October; then said I should come with him, and if I would give him the notes he would learn me; there was a writing between us at the time these notes were given; this was the first contract, and was reduced to writing; think I told him I had been out of my head, and wished him to notice whether I was affected by study; told him I did not feel altogether right at times; at that time didn't feel altogether well.—

27th28th29th30th31st32nd

Dr. Thomson told me that Mohr said I was a fool for going into this arrangement; I told him maybe I was; if so, I wanted him to let me know it.—He said he believed it was not so; that I had as good reason as anybody; recollect nothing further as to that matter; said I should keep our bargains pretty much secret; said he would insure if I would go in with him in the last contract, it should all come right and I should not lose a cent; that if I would deed my land to secure him a home, he would lose his right hand before I should come to loss. He said he would pay all the notes that had been given up to that time, except \$1800, if he could get the deed for the house. The first note was \$400, and \$200 afterwards; our conversations were generally private; first went in his office in January; stayed three or four weeks; the last contract was made while I was in his office. I went on and tried to keep the books, and studied and read; he told me what to do, and seemed to think I was getting along pretty well; the first contract was for three months, the last for two years; last contract was in January, and I went with him under that; when we went into the new building I did not find things as they were before, and I could not stay.

He showed me how to make up different kinds of medicines; I couldn't keep the books to please him; it was to take down names, amounts received

and amounts paid out. The partnership accounts were kept in another book.

Question by State's Attorney: "What did Mrs. Thomson say to Dr. Thomson in presence of Lucas?" Objected to by defendant; objection overruled, and excepted to. Answer: "After we got into the new house it did not appear as it was before; I expected to have half of the house; he said he was willing if she was, but they both together objected." It was the understanding when the house was bought that I was to have the use of half the house; after the house was bought they objected; he said I should have the use of the house for two years or he would provide well for me; said I shouldn't tell my wife about the \$200 note, as he would provide for it soon. The note has not been paid by me; the reason why I left was because I couldn't have room; he complained of my asking for money and help, and said I ought not to expect it so soon; got angry because I asked for money; said I expected too much; sometimes treated me very well; there was one \$200 note after the house was bought; there were four notes besides; the \$800 and \$200 note was after the last bargain; the last notes, except the \$200, were given for the house.

I went away and left him; I took it that Thomson and his wife were making fun of me; they were talking together and laughing. (Two notes submitted to witness.) They are two notes given by me for the purchase of the house. (Mortgage submitted to witness.) The mortgage was given at the same time. Notes offered in evidence; objected to by defendant on the ground that they are not proper evidence under the indictment; overruled, and excepted to by defendant.

Another note offered in evidence; same objection; overruled and exception by defendant.

Witness resumes. Previous to the \$200 he had got the \$1500, for the house and lot, and \$425, in the fall; the \$200 was got after the house was bought; said I ought to give \$200 more; could keep it from my wife, and he could get the money any time; don't know that it has been paid; Thomson had one copy, and I had one of the first contract; I went into Thomson's office under the first contract, in December, I think; boarded and lodged at his house. (Paper submitted to witness.) It is one of the contracts between myself and Dr. Thomson; was made at the time it bears date. The contract is my own (witness') hand-writing; don't know whether Thomson or myself proposed to make the contract; a different arrangement from the first contract was made in January; don't know who first proposed it; he said he could do more for me if I could get a house for him; if I would get a house he would do all he could to keep me along; he suggested the Mohr house; don't remember who made out the deed from Mohr to Thomson; there was some difficulty in getting my wife to sign the deed; told him my wife would not sign it. He said that was bad, and I must try and get her to sign it; said I should never lose a foot of land by him, if I could get it arranged.

Q. "Was there anything said by Thomson how he managed with his own wife when he wanted her to sign deeds?" Objection; overruled; excepted to by defendant. Answer: He said his wife would do as he wanted her to in those matters. These notes (in evidence) were delivered to Mr. Mohr, to pay for the house Thomson occupies. Under the second contract I was there from the time it was made until February or March; occasion of my leaving was, I couldn't get along peaceably; when we made the bargain he said he would help me; he was angry when I wanted money. I held a note against him and got some money; he did not say whether it was to go on the note or not; was sorry I had given the \$200 note; Thomson said he would burn it if I said so. (Witness identifies \$200 note above referred to.)

The second contract between witness and defendant offered in evidence, which was in hand-writing of witness Levi Lucas, and reads as follows:

"Freeport, Stephenson County, Illinois, January 22d. A. D., 1859. Article of agreement made and entered into by and between Levi Lucas of

41th "the first part, and Robert C. Thomson of the second part, witnesseth, that
 "the said Levi Lucas doth agree to pay said Robert C. Thomson the sum of
 "eighteen hundred dollars in the following manner on a house and lot that
 "said Robert C. Thomson bought of Jacob Mohr, in Freeport. He also
 "agrees to assist said Robert C. Thomson in his office, to prepare medicine
 "and assist him in his practice for the term of two years; he also agrees to
 "clerk for said Robert C. Thomson, and to keep his books for him for the
 "term of two years. The said Robert C. Thomson, on his part, doth agree
 "to teach said Levi Lucas in all the different branches of his profession, as
 "far as his abilities will admit; he also agrees to take him in as a partner in
 "all business matters, and to let him have one-half of all the profits derived
 "therefrom; he also agrees to let said Levi Lucas have one half of all his
 "instruments, and all medicine and the furniture, and all the articles be-
 "longing to his office; he also agrees to take said Levi Lucas' son on his
 "age, and to teach and qualify him for the same practice which said Rob-
 "ert C. Thomson herein practices; he also agrees to go into no speculation
 "in trade or otherwise, until he has advised and consulted and agreed with
 12th "said Levi Lucas as partner; he also agrees to answer to or pay all notes
 "given to him by said Levi Lucas up to the present date, excepting two notes
 "lately given to Jacob Mohr, calling for \$1500; he also agrees, in case of
 "death under one year of said Levi Lucas, to continue to fulfill the aforesaid
 "contract to said Levi Lucas, his heirs or assigns. As witness o r hands
 "and names."

"LEVI LUCAS."

"ROBERT C. THOMSON."

48th Witness resumes. The contract is in my own (witness') hand-writing.—
 Thomson said I should draw the writing as I was a good hand at it; there
 were several attempts made to come to an agreement before the contract was
 settled upon; I couldn't tell what was best to do; thought it was the best
 I could do to suit the times I was in; don't know that the language of the
 contract was dictated any more by Thomson than by myself; it was writ-
 ten as we talked it over.

After the contract was made, the first falling out was in about four weeks;
 Thomson wanted a receipt; Mrs. Thomson said I must watch him or he
 would cheat me; don't know whether it was in earnest or not; don't know
 whether it was before or after the \$200 note was given; that was the first that
 42th I had any alarm; there was a \$400 note out then besides the \$1800; said he had
 been making a good many bargains and wanted a receipt; I said I couldn't
 do that, and said he was very foolish for asking it; it was the first time I
 thought anything wrong; his wife said I must watch him or he would
 cheat me; she laughed when she said it; there was nothing more said
 about it. After we got into the new house I wanted to move in myself; I
 understood I was to have part of the house; he said he was willing I should
 have the room, but his wife was not; we couldn't stay together in peace.—
 45th He found fault with my book-keeping after we got into the new house; the
 final rupture was about keeping the books, and because he failed to give me
 money which he had promised me. These transactions took place in Free-
 port, Stephenson County, Illinois, excepting one time he came to my house.

Cross.—After the first contract I was in the office from time to time, till
 second contract was made; defendant never prevented my going there dur-
 ing that time; up to that time don't know that I found any fault with his
 instruction; I drew the second contract; was reading in the office when
 second contract was made; before this I saw him take in money; knew he
 had a practice, and that some people came a great distance to see him; saw
 46th this before I entered into second contract; declined to give Thomson a receipt
 because it might interfere with our previous arrangements.

Thomson refused to help me according to his promise. He did have to
 47th pay a Deed of Trust that was on the house, and said he would keep his
 money to pay that; think he violated the written agreement. He objected
 48th to having my name appear as a partner; he said it might injure the busi-
 ness; I understood that I was to be a partner from the start, and have

4-8th half of the money on the notes; asked him for a settlement and for money, and could get neither. There were notes that came in after this. Thomson said I might take the notes and collect them if I could. The notes were in the office. I have an interest in getting back this property. (Bill in chancery in case of Lucas vs. Thomson submitted to witness.) I signed the bill and think I swore to it.

The record was here offered in evidence on the part of the people, to prove Deed, Jacob Mohr to Robert C. Thomson; (objected to by defendant on ground of insufficient notice; notice was given at ten o'clock, A. M., yesterday; also on ground of variance between the record and allegations of the indictment; also generally—objection overruled; exception by defendant.)

5-1st John H. Addams.—Known Levi Lucas since 1844 or 1845; not acquainted with Dr. Thomson. Lucas' mind has been somewhat out of order since I have been acquainted with him. (Defendant objects to any testimony of unsoundness of mind of Lucas, except at the time of the transactions in suit—objection overruled and exception by defendant.)

Witness resumes. Think in 1845 Lucas gave me a scolding because we were going to build a school house. From the character of his remarks there was something wrong with him; thought there was something wrong in the manner he got along with his work. He applied to me to become a school teacher and I put him off. He is a good neighbor, honestly disposed and conscientious. I thought peddling books two or three years ago unsettled his mind; think I have observed strangeness of action within a year or more. Sometimes he is exceedingly cheerful, at other times much depressed; has complained at times of being sick. I had a child die about a year ago. It died in the evening, and he stayed at my house all night; thought that was very singular; think a stranger would sometimes notice his peculiarity, at other times not.

5-2nd Cross.—Lucas during this time held public office; was road master, and think he was School Director; have dealt a little with him, and sold him one lot; he owes me about \$150; have seen Lucas's name on tickets as a candidate for office; did business for him as I did for other people.

6-4th Josiah Clingman.—Have been some acquainted with Levi Lucas for twenty years; think him honest; couldn't give any definite account of his mind; think he is not a man of very strong mind; don't think he is an idiot or crazy; don't know whether his mind is unsound. A good many years ago, when they were building the Railroad, he was opposed to it; compared the Railroad with the canal in Ohio, and gave reason for difference in the price of grain; don't think I have seen anything peculiar in Lucas in the last two years.

6-5th Cross.—Have had a little business with him, and did it just as I did with any other man

6-6th Cordelia Lucas, wife of Levi Lucas.—(Defendant objects to witness, on ground name not on back of indictment, and, also, that wife of Levi Lucas, not competent witness; overruled and exception.) Witness is wife of Levi Lucas; became acquainted with Dr. Thomson year ago last September; he doctored in the family; told Thomson my husband was not capable of learning medicine; said he had been out of his head; don't remember when I told him. I told Thomson he should release him from his obligation. He said he didn't want me there making a fuss. He said the land should not be sold. Lucas called his children before he went away; said he was not going to return, and slapped my jaws. Lucas went to Thomson's to stay first Monday in January. Lucas has not been to an insane asylum to my recollection. Q. "What was the state of Lucas' mind for the last two or three years?" (Objection by defendant. Objection overruled and exception.) Ans. He was capable at times and sometimes not.

5-7th Cross.—At the time I was at Thomson's house, he said he didn't want me there making any trouble; he would do as he agreed.

5-8th Adrian Lucas.—Lucas was taken to an insane asylum eighth August, 1831. (Defendant objected to any evidence of insanity, except at the time of transactions in suit. Overruled and exception.) When he came here thought

his mind pretty well settled. He seemed prospering. About two years ago he got a book agency and hired young men to peddle books for him. The manner he got the Cedarville property made me think him very injudicious as he could not have got out of it without help. Sometimes he is all for trade and at other times dejected and won't do anything.

59th *Cross.*—Think Lucas has lived in Cedarville about three years. When he went there he had five eighties of land. His purchases in Cedarville amount to about \$450. The five eighties of land worth about \$20 per acre. He has other property to the value of \$400 or \$500.

60th *Thomas Bullock.*—A year ago last November saw Thomson; asked me what Lucas was worth; asked me to tell Lucas he wanted to see him. Three weeks after he told me Lucas had entered into partnership with him; didn't think Lucas was altogether right in his mind. A year ago Lucas wanted to borrow money of me to pay his tax; said he had some wheat, and when it was threshed he could pay me; his wheat was not good. Last June he came to my house to get some potatoes. I said I had only a bushel and I discovered he was out of his right mind. Four or five years ago I was Road Commissioner with him; he got very angry one day with the clerk after we finished running out a road, and I discovered his mind wasn't right. I paid money to the Doctor; last time \$10 00.

Cross.—Am a relation of Lucas; Dr. asked me if Mrs. Lucas interfered with his business a good deal; told him I thought she did; told the Doctor that Lucas was a clever fellow.

62nd *Thomson Wilcoxon.*—Known Lucas a long time; was raised in same neighborhood; saw Lucas on a steam boat; they had him on the upper deck; discovered that his mind was entirely gone; that was in 1831, or 1832; haven't been very intimate with him in this country; spoke to me three or four years ago about having a book agency; thought his mind wasn't entirely right, but couldn't say positively.

Chancellor Martin.—Am a physician; know Dr. Thomson partially; it would ordinarily take not less than three years, I think, to enable one to learn eye and ear doctoring so as to practice; have seen a few of the cases Dr. Thomson has treated; don't think they were well treated; (objection by defendant; overruled and exception,) those I saw might have been the worst cases, but think they were badly treated; shouldn't think from my knowledge of the cases I saw, that he was qualified to teach eye and ear doctoring.

63rd *Cross.*—I referred to Garner's case; he had what I call opacity of cornea, and inflammation of the lids; had no cataract; I assisted in treating him; Garner was sixty or seventy years of age; his case was of a great many years standing.

64th *Dr. E. C. DePuy.*—Have met Dr. Thomson; am a physician; not particularly acquainted with Thomson's practice; don't know whether he is qualified to teach eye and ear doctoring; have seen some cases where his patients were benefited by his treatment, others that were not; some cases that I approved of the treatment, and some perhaps I did not; but he might not have finished his treatment; has his way and I have mine.

Cross.—I told the man, in the case I spoke of, that he ought to have had more of the same treatment.

65th *Dr. B. T. Buckley.*—Am a physician; it is customary to study three years; the eye and ear treatment is one of the most delicate branches of the profession; but a small portion could be imparted in three months.

Cross.—Generally study three years, and attend a course of lectures, and then practice in all diseases.

W. W. Robey.—Know Levi Lucas; not so much within last three years as before that; can't say I know anything particular about him; never regarded him as a sane man, but can't say why; can't state any facts.

66th *John A. Clark.*—Think Lucas generally came to me for legal advice; don't recollect doing business for him until the chancery suit; it was at my suggestion Meacham and Bailey were employed to bring the chancery suit

against Thomson; Thomson is now living in the brick house on Galena street.

66th

Cross.—Don't know whether it was State's Attorney or myself first suggested the indictment; Meacham and Bailey were employed in the chancery suit to recover back the property from Thomson; that suit is now pending; Mr. Crain and I signed stipulation to dismiss chancery suit, and the State's Attorney signed stipulation to dismiss indictment; (stipulation submitted to witness) this is the stipulation of myself, Mr. Crain and the State's Attorney; the date, I believe, was the time the instrument was executed; can't explain the dates further than they appear.

67th

I. G. Bedee.—Value of the house Thomson lives in about two thousand dollars.

Mr. Pollock.—Think the notes were worth their face when given; one \$800 the other \$1,000; think \$200 note was worth its face; record of deed of Thomson to William Shortt offered in evidence by prosecution; record proved by Guiteau, Clerk; Deed was left in Clerk's office by Thomson; (this was a deed of the house and lot from defendant Thomson and wife to William Shortt.)

TESTIMONY FOR DEFENCE.

The defendant offered the stipulation proved by witness Clark. First by the stipulation signed by John A. Clark, Attorney for L. Lucas, and J. A. Crain, Attorney for Robert C. Thomson; it is agreed that upon the surrender to Levi Lucas of his two notes for \$1,000 and \$800, and the discharge of the mortgage given to secure the same, or the conveyance in fee, free of incumbrances, of house and lot purchased of Jacob Mohr and conveyed to Robert C. Thomson and now occupied by him (except an incumbrance of about \$75,) to said Lucas; Lucas would execute and deliver to Thomson a full release and discharge of all action and causes of action; Thomson to surrender notes and mortgage or make conveyance aforesaid.

Dated Freeport, April 12, 1859.

Then follows stipulation of State's Attorney as follows: "I hereby agree that upon the settlement between said Lucas and said Thomson as above, I will enter a nolle prosequi upon an indictment found by the Grand Jury against said Thomson."

U. D. MEACHAM, State's Attorney.

72nd Defendant then read in evidence a copy of the contract heretofore set forth between Lucas and Thomson, dated January 22d, 1859, also the following receipt:

"January the 24th, 1859. }

Freeport, Stephenson county, Illinois. }

78th Settled up to this date by giving note and drawing and signing articles of agreements, as witness our hand and seal."

"LEVI LUCAS, Seal,"

"ROBERT C. THOMSON, Seal."

79th Defendant then offered in evidence a letter written by Levi Lucas to defendant Thomson, dated February 26, 1859, requesting defendant to send down medicine for a child of Lucas, then sick, also to send him medical books, stating he should come up to Thomson's as soon as the son should get better.

75th *Joseph Norris.*—Known Levi Lucas twenty years; never knew of his being of unsound mind; never heard such a thing suggested until lately; I was seven months under treatment at St. Louis; came to Dr. Thomson in November; he has helped me much; was under a celebrated physician's care in St. Louis; have been with Thomson nearly two months.

Isaac Haas.—Known Lucas sixteen or seventeen years; never noticed anything unsound about him; knew Lucas was Commissioner of Highways, and stood between parties in dispute about laying out a road, and arranged matters and acted the part of a sensible man.

76th *William Dove.*—Have seen Dr. Thomson and Levi Lucas; was present at Hibbard's office; Lucas came in; spoke in reference to leaving Thomson; he said he did think at one time that he should like to practice medicine,

but when he came to see the amount of study, and the number of books to be read, and when he found out what the practice was, he came to the conclusion that he did not want to do it; this conversation took place about the 1st of October last.

77th *Mr. Lull.*—Have been in Dr. Thomson's office as a student; I was there before Lucas came and until after he left; Never saw any treatment from Thomson to Lucas but what was just and kind; Lucas boarded with Thomson a good part of the time, and slept with witness; Thomson took in some days \$10, some days \$15 to \$20; recollect one day \$37; some days not so much; I know of a man coming from Kansas to be treated by Dr. Thomson; don't know the average of Thomson's receipts; he charged some in his books, and took notes.

Cross.—Patients came there very frequently; saw them pay him money while Lucas was there; can't tell what it would average.

78th *James M. Smith.*—Known Lucas eight years; never known any unsoundness of mind about him; never heard anything of that until within a month.

Samuel B. Harris.—Known Lucas since 1849 and 1850; never saw any indications of unsoundness of mind about him; Lucas traded in a store that I was in, in Cedarville; am now in business here.

79th Whereupon the Jury retired to consider of their verdict, and afterwards, on the 7th day of January, 1860, returned into court the following verdict: "We, the jury, find the defendant guilty," and thereupon the defendant moved the court for a new trial, and in arrest of judgment, for the following reasons, to wit:

80th 1. Because the verdict is contrary to the evidence.
2. Because the verdict fails to do substantial justice between the parties.
3. Because there is a variance between the proof offered in evidence and the charges in the indictment.

4. Because there was no sufficient evidence that Levi Lucas was of unsound mind at the time of making the contract.

81st 5. The court erred in admitting proof of the unsoundness of mind of Levi Lucas seventeen years previous to the time of trial.

6. The court erred in admitting any testimony of the unsoundness of mind of Levi Lucas at any other time than at the time of making the contract and agreements with defendant.

7. The court erred in admitting the record of the Deed from Jacob Mohr to defendant, without any proof that the Deed was in defendant's possession and without sufficient and legal notice having been served on defendant to produce the Deed.

8. Because the court allowed plaintiff to introduce parol testimony to vary and contradict the written contract between Lucas, the prosecuting witness, and the defendant.

9. The court erred in not confining the plaintiffs in their proofs to the written contract between prosecuting witness, Levi Lucas, and defendant, or to conversations between Lucas and defendant, subsequent to the date of said contract in relation to the same.

10. The court erred in permitting the witness Cordelia Lucas, wife of Levi Lucas the prosecuting witness, to testify on the trial of this cause, and her name does not appear on the back of the indictment.

82nd 11. Because the proof shows a Deed of Jacob Mohr to defendant, and not from Levi Lucas, or that Levi Lucas was the owner of the property.

12. Because the evidence shows that there was no criminal intent in the contract between prosecuting witness and defendant.

13. The court erred in not allowing defendant's challenge of juror Hiram C. Best for cause.

And in arrest of judgment the indictment should have been quashed, and judgment should be arrested because—

1. Indictment does not aver and charge that Thomson knew that prosecuting witness was of unsound mind, and incapable and disqualified to learn the art and science of surgery and eclectic medicine, and eye and ear doctoring at the time of making the contract.

2. Because the indictment does not show fraudulent intent on the part of the defendant, and it does not appear from the indictment that the transaction was any fraud upon Levi Lucas.

83 ¹²/₁₁ 3. The indictment shows upon its face a contract between the parties, on which a complete remedy can be had in a civil suit.

4. The indictment does not show whose property the notes, Deed and real estate were, and does not show them to be the property of Levi Lucas.

5. The indictment shows a promise on the part of defendant to do an act in future, and no false pretense will be presumed until the time for the performance of the act has expired and an indictment will not, in such case, be sustained.

6. The indictment shows that prosecuting witness, Levi Lucas, has an adequate remedy in a civil action if any fraud was practiced, and the indictment for false pretenses cannot be sustained.

84 ¹²/₁₁ 7. The indictment does not charge that defendant knew that Lucas was incompetent to learn the art and science of surgery and eye and ear doctoring and eclectic medical science and practice.

8. The indictment avers that the choses in action, money, goods, wares, and effects and other valuable things were the property of the people of the State of Illinois, and does not aver that they were the property of Levi Lucas at the time of obtaining the same.

And because the indictment is in other respects informal, uncertain, insufficient and indefinite.

85 ¹²/₁₁ And afterwards, on the 2d day of February, 1860, the said motions of said defendant for a new trial, and in arrest of judgment came on to be heard, and thereupon the said motions were overruled by the court.

And the court thereupon rendered judgment upon said verdict against said defendant, and imposed a fine of five hundred dollars upon said defendant, and sentenced said defendant to six months imprisonment, and to pay the costs; and to stand committed until said fine and costs were paid.

To which ruling of the court, in overruling the said defendant's motions for a new trial, and in arrest of judgment, and in rendering judgment and pronouncing sentence upon the said defendant as aforesaid, the said defendant then and there excepted and now assigns the same for error.

Errors assigned on the record—

And the said defendant assigns the following errors :

87 ¹²/₁₁ 1. The court erred in overruling defendant's motion to quash the indictment.

2. The court erred in refusing to sustain the defendant's challenge for cause of the juror Hiram C. Best.

3. The court erred in permitting illegal testimony to be given to the jury.

4. The court erred in excluding from the jury legal testimony offered by the defendant.

5. The court erred in overruling defendant's motion for a new trial.

6. The court erred in overruling defendant's motion for arrest of judgment.

TURNER & INGALLS, for Plaintiff in Error.

9
Robert C. Thurman,

vs

The People

Filed April 3-1840

L. Leland
Clerk

12921

Supreme Court of Illinois,

THIRD GRAND DIVISION, - - - APRIL TERM, 1860.

ROBERT C. THOMSON,	}	ERROR TO STEPHENSON.
<i>Plaintiff in Error,</i>		
VS.		
THE PEOPLE,		
<i>Defendants in Error.</i>		

Brief and Points for Plaintiff in Error.

1.

This was an indictment for false pretenses. The false pretense charged is, that the defendant represented that he would take the prosecuting witness, Lucas, into co-partnership with him and would teach him his profession of eye and ear surgery, &c., and that defendant did not intend to take Lucas into co-partnership with him, and did not intend to teach said Lucas the art and science of eye and ear surgery, &c. The indictment cannot be sustained.

"A promise to deposit with the prosecutor a draft at some future time, though willfully and intentionally false, and the means of the prosecutor parting possession with his property, is not within the law. A pretense that the party would do an act that he did not mean to do, was holden by all the judges not to be a false pretense within the statute of Geo. 2; and the same rule is distinctly recognized in this country."

Wharton's Am. Crim. Law, 4th ed. sec. 2118.

A promise to bring money from New York to pay the prosecutor when the defendant knew that he could not get the money, is not indictable. *Ibid.* sec. 2087.

"The pretense must relate to past events. Any representation or assurance in relation to a future transaction, may be a promise, or covenant, or warranty, but cannot amount to a statutory false pretense."

Commonwealth v. Drew, 19 Pick. 185.

Roscoe's Crim. Ev. 2d ed. 422.

King v. Codrington, 1 Car. & Payne 661.

2.

The indictment alleges that defendant, "intending by unlawful means to get into his possession the choses in action, money, goods, wares and effects, and other valuable things of the people of this state," &c., but does not allege whose property he got into his

possession. It does not allege that he intended to get possession of the property of the prosecuting witness. It does not allege that the notes deed, real estate or property obtained, was the property of Levi Lucas or any other person. This is a fatal defect.

"Where an indictment for obtaining the signature of a person to a deed of land, did not allege that the grantee in the deed owned or claimed any title to the lands conveyed thereby," the indictment is defective." Wharton's Am. Crim. Law, 4th ed., sec. 2157.

"It is necessary to state whose the property was at the time."

Ibid. sec. 2157; 3 N. & P. 472.

Sill v. R., 16 Eng. C. L. & Eq. 375.

R. v. Parker, 3 A. & E. 292.

State v. Lathrop, 15 Verm. 279.

"An indictment for obtaining goods by false pretenses must state them to be the property of some person, and it is not sufficient to state that they were obtained from a person with intent to defraud that person of the same. The indictment stated that the defendant made certain false pretenses, by means of which he obtained from Yates a certain sum of money, with intent to cheat and defraud said Yates of the same. ALDERSON B. 'There is an objection to the indictment in this case. The money which has been obtained is not laid to be the property of any person, which it ought to be, in order to exclude a subsequent indictment for larceny. It would be impossible to plead an acquittal or conviction on this indictment in bar to a prosecution for larceny under the provisions of the statute.' And the court ordered the indictment to be quashed. And if such an indictment omit to state to whom the goods belonged, it is bad upon error, and the defect is not cured by the 7 Geo. 4, C. 64, s. 21."

2 Russell on Crimes, 7th ed. 307.

Reg. v. Norton, 8 C. & P. 196.

"The indictment stated that the defendants made certain false pretenses, and that they thereby obtained from one Holt, divers goods and merchandises, with intent then and there to cheat and defraud the said Holt of the same, and the defendants having been convicted and sentenced to be transported, error was brought upon the judgment on the ground, among others, that it was not stated in the indictment that the goods were the property of any person; and the court held that the indictment was clearly bad upon the face of it, and that it was not made good after verdict."

2 Russell on Crimes, 7th ed. 308.

Reg. v. Martin, 8 Ad. & E. 481.

"The indictment must state the goods to be the property of some person named, and where no owner is laid the indictment will be quashed."

Wharton's Crim. Pleading, 2d ed., 528. (j)

a.

The indictment does not aver that defendant knew that Lucas was incapable of acquiring a knowledge of the profession of eye and ear surgery, &c., at the time of the contract.

"To give it a criminal character, there must be a *scienter* and a fraudulent intent." 19 Pick. 184.

"The indictment must set forth the pretenses; where it alleged the money to have been obtained by 'false pretenses,' without specifying them, it was holden to be error and judgment was reversed."

Archibold Crim. Plead. 3d Am. ed. 246.

R. v. Mason, 2 T. R. 581.

The indictment must also negative the pretenses by special averment, and when such averment was omitted it was holden to be error, and judgment was reversed.

Archibold, 247.

R. v. Perrot, 2 M. & S. 379, 386.

4.

If there was any fraud in the transaction on the part of the defendant it was a breach of contract, which might sustain a civil action, but is no ground for an indictment. If the defendant failed to comply with the terms of his agreement as charged, and the prosecuting witness has been injured thereby, his remedy is by an action on the case.

"It is not the policy of the law to punish criminally mere private wrongs, and the statute may not regard naked lies as false pretenses. It requires some artifice, some deceptive contrivance, which will be calculated to mislead or throw a person off his guard. He may be weak and confiding, and his very imbecility and credulity should receive all practical protection. But it would be inexpedient and unwise to regard every private fraud as a legal crime. It would be better for society to leave them to their civil remedies."

MORTON J., *Com. v. Drew*, 19 Pick. 185.

Roscoe's Crim. Ev., 2d ed. 419.

Goodhall's case, Russ & Ryan, 641.

2 Russell on Crimes, 280 & 282.

"Where a person got possession of a promissory note by pretending he wanted to look at it, and then carried it away, and refused to deliver it to the holder, it was held to be a mere private fraud and not punishable criminally."

Wharton, 4th ed., sec. 2119.

People v. Miller, 14 Johns. 371.

It has been held not indictable for a man to violate his contract, however fraudulently it be broken. 3 Greenleaf Ev., § 84.

Judgment was arrested after defendant had pleaded guilty, it appearing that the charge amounted only to a breach of contract for which the remedy was by a civil action. *Com. v. Hearsey*, 1 Mass. 138.

5.

The court below erred in refusing to allow the defendant's challenge of the juror H. C. Best, for cause. The juror said, "I conversed with a witness in this case and formed an opinion as far as I heard. I believed what I heard." "I have not formed an opinion as to the guilt or innocence of the prisoner." "I formed an opinion as far as I heard."

A juror is incompetent when he has made up a decided opinion upon the merits of the case, from personal knowledge, statements of witnesses, from rumor, or from either of them.

Smith v. Eames, 3 Scam. 80, and cases there cited.

6.

The testimony of Levi Lucas and his wife was objected to on the ground of the interest of the former in the result of this suit. The statute requires that in a proceeding of this kind the defendant, if convicted, shall be sentenced to restore the property, if it can be done.

1 Greenleaf Ev., 8th ed., §§ 336, 341, 342.

3 Wendell, 376.

Scates' Comp., 401.

7.

The evidence wholly fails to make out a case for the prosecution. The proof utterly fails to show that the prosecuting witness, Levi Lucas, was of unsound mind at the time the contracts were made.—His own testimony indicates him to be a person of good memory, and, at least, average understanding and ordinary intelligence. It appears that he himself drew up the final contract between the parties. The witnesses introduced by the prosecution testify that they had sold property to him, and dealt with him as they did with any other man. That he had been a candidate for office, and had held office, and performed the duties in a satisfactory and sensible manner, and witnesses who had known him a number of years, had never heard of any unsoundness of mind until after the difficulty between him and defendant.

The evidence does not show a fraudulent intent on the part of the defendant.

The contract between the parties provides that the defendant should teach the prosecuting witness in his profession, and that he should be a partner in all business matters; that he should have one-half of all the profits derived from the business, and one-half of all the books, instruments and office apparatus. Also, that the defendant should take the son of the prosecuting witness, and give him instructions, and qualify him for the defendant's profession; and in the event of the death of the prosecuting witness within one year, defendant was to continue to fulfill on his part. The prosecuting witness was in the office of defendant for some time before this contract was made, and had ample opportunity to observe his business. From the testimony it appears that the defendant's practice was large and remunerative; and the proof wholly fails to show that the defendant made any false pretenses, either in respect to his business or his professional ability. The prosecuting witness says he left the defendant in consequence of a difficulty about money; that defendant did not let him have it when he had promised, and that defendant found fault with the manner in which he kept the books; but he states that the notes taken in the course of business, were in the office; he had access to them, and defendant told him to take them and collect, if he desired.

The testimony on the part of the defendant shows (proper foundation having been laid in the testimony of prosecuting witness) that the prosecuting witness declared that he left defendant because, when he came to see the amount of study required, and to find out what the practice was, he did not wish to continue it.— He abandoned the engagement because matters did not go to his entire satisfaction, and commenced a suit in chancery, and instigated this criminal proceeding in aid of his civil suit.

TURNER & INGALLS,

For Plaintiff in Error.

⁹
Thompson vs People
Brief & Points

Filed Apr. 14/60
S. Seland
Clerk.

~~1292~~

IN THE SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION, APRIL TERM, A. D., 1860.

ROBERT C. THOMSON,
Plaintiff in Error.

vs.

THE PEOPLE,
Defendants in Error.

ERROR TO STEPHENSON.

This was an indictment for false pretences. The bill of indictment was found in the Stephenson Circuit Court, at the September Term, A. D., 1859, and is in the words and figures following, to wit:

"STATE OF ILLINOIS, } *Of the September Term of the Stephenson County Circuit*
Stephenson County. } ss. *Court, in the year of our Lord one thousand eight hundred and fifty nine.*

The Grand Jurors chosen, selected and sworn in and for the said County of Stephenson, in the name and by the authority of the people of the State of Illinois, upon their oaths present: That one Robert C. Thomson, late of said County, on the twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty-nine, in the said county of Stephenson, knowingly and designedly devising and intending by unlawful ways and means to obtain and get into his hands and possession the choses in action, money, goods, wares and effects, and other valuable things of the good people of this state, and with intent to cheat and defraud one Levi Lucas, late of said county, the said Levi Lucas then and there being of unsound mind and memory, did then and there unlawfully, knowingly and designedly, falsely pretend and represent to the said Levi Lucas, he, the said Robert C. Thomson, then and there knowing that the said Levi Lucas was of unsound mind and memory, that he, the said Robert C. Thomson, was then and there a person of knowledge, ability and skill in the art and science of surgery, and eye and ear doctoring business, and eclectic medical science and practice; and that he, the said Robert C. Thompson, was then and there well able and qualified to teach and impart the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice to the said Levi Lucas, and that he, the said Levi Lucas, was then and there able and competent to learn and acquire the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice, and that he, the said Robert C. Thomson, was then and there engaged in the practice of surgery and eye and ear doctoring business, and eclectic medical practice, and was then and there doing therein a large and remunerative business, the avails of which business then and there amounted to from twenty to thirty dollars per day; and that he, the said Robert C. Thomson, then and there intended to take, and would take the said Levi Lucas into co-partnership with him, the said Robert C. Thomson, in the art and practice of surgery and eye and ear doctoring business and eclectic medical practice; and that he, the said Robert C. Thomson, then and there intended to teach, and would teach the said Levi Lucas the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice. And the said Levi Lucas then and there believing the said false pretences and representations, so made as aforesaid by the said Robert C. Thompson, and being of unsound mind and memory, and he, the said Robert C. Thomson, then and there well knowing that the said Levi Lucas was then and there of unsound mind and memory, and he, the said Levi Lucas then and there relying upon said false pretences and representations, and being deceived thereby, was then and there induced by reason of, and by means of the said false pretences and representations, so made as aforesaid, to deliver, and did then and there deliver to the said Robert C. Thomson, a certain deed from one Jacob Mohr, to the said Robert C. Thomson, and the lands therein described, of the value of eighteen hundred dollars, said deed being of the following described real estate,

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5th

5th

to wit : Being part of lot number four, in block number forty-nine, in the original town (now city) of Freeport, in said county, according to a plat of said city now on record in the office of the Clerk of the Circuit Court of said county; and the said land being more particularly described in a certain deed made by one Jacob Mohr to the said Robert C. Thomson, and bearing date the nineteenth day of January, in the year of our Lord one thousand eight hundred and fifty-nine, and recorded in the office of the Clerk of the Circuit Court of said county of Stephenson, in book twenty-seven of Deeds, on page three hundred and eighteen; and also by reason of and by means of said false pretences and representations, and then and there relying upon the said false pretences and representations, the said Levi Lucas did then and there deliver to one Jacob Mohr, at the request of the said Robert C. Thomson, and for his sole use and benefit as payment for the land described in the said deed above mentioned, two promissory notes, made by the said Levi Lucas to the said Jacob Mohr—one of said notes of the value of eight hundred dollars, being for the sum of eight hundred dollars, payable in one year from the date thereof, and ten per cent. interest; and the other of said notes of the value of one thousand dollars, being for the sum of one thousand dollars, payable to the order of the said Jacob Mohr, two years after the date thereof, and ten per cent. interest, and both of said notes bearing date the nineteenth day of January, in the year of our Lord one thousand eight hundred and fifty nine; and the said Robert C. Thomson did then and there, on the said twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty nine, at the said county of Stephenson, well knowing that the said pretences and representations were false, unlawfully, knowingly and designedly, by means of said false pretences and representations, obtain the said deed, and the said notes of the said Levi Lucas, and with intent then and there to cheat and defraud the said Levi Lucas of the same; whereas, in truth and in fact, the said Robert C. Thomson was not then and there a person of knowledge, ability and skill in the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice; and whereas, in truth and in fact, the said Robert C. Thomson was not then and there well able and qualified to teach and impart the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice to the said Levi Lucas; and whereas, in truth and in fact, the said Levi Lucas was not then and there able and competent to learn and acquire the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice; and whereas, in truth and in fact, the said Robert C. Thomson was not then and there engaged in the practice of surgery and eye and ear doctoring business, and eclectic medical practice, and was not then and there doing therein a large and remunerative business, the avails of which business then and there amounted to from twenty to thirty dollars per day; and whereas, in truth and in fact, the said Robert C. Thomson did not then and there intend to take, and would not take the said Levi Lucas into co-partnership with him, the said Robert C. Thomson, in the art and practice of surgery and eye and ear doctoring business, and eclectic medical practice; and whereas, in truth and in fact, the said Robert C. Thomson did not then and there intend to teach, and would not teach the said Levi Lucas the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice. And so the jurors aforesaid, upon their oaths aforesaid, do say that the said Robert C. Thomson, by means of the false pretences and representations aforesaid, on the said twenty-second day of January, in the year of our Lord one thousand eight hundred and fifty-nine, in the said county, unlawfully, knowingly and designedly by means of said false representations and pretences, did obtain from the said Levi Lucas, the said deed, lands and notes in the manner and form aforesaid, with intent then and there to cheat and defraud the said Levi Lucas of the same, against the form of the statute in such case made and provided, and against the peace and dignity of the same people of the State of Illinois.

8th

AND the jurors aforesaid, upon their oaths aforesaid, do further present that the said Robert C. Thomson, on the eleventh day of January, in the year of our Lord one thousand eight hundred and fifty-nine, at said county of Stephenson, devising and intending by unlawful ways and means to obtain and get into his hands and possession the choses in action, money, goods, wares, chattels, effects, and other valuable things of the good people of this state; and with intent to cheat and defraud the said Levi Lucas, did then and there knowingly and designedly falsely pretend and represent to the Levi Lucas (he, the said Levi Lucas, then and there being of unsound mind and memory, and he, the said Robert C. Thomson, then and there well knowing that the said Levi Lucas was of unsound mind and memory) that he, the said Robert C. Thomson, was then and there a person of knowledge, ability and skill in the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice, and able and qualified to teach and impart the same to the said Levi Lucas; and that he, the said Levi Lucas, was then and there able and competent to learn and acquire the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice; and the said Levi Lucas then and there believing the said false pretences and representations, so made as aforesaid by the said Robert C. Thomson, and being of unsound mind and memory, and the said Robert C. Thomson then and there well knowing that the said Levi Lucas was of unsound mind and memory, and the said Levi Lucas then and there relying upon said false pretences and representations, and being deceived thereby, was then and there induced by reason of, and by means of the said false pretences and representations, so made as aforesaid to make and deliver, and did then and there make and deliver, to the said Robert C. Thomson, one promissory note for the sum of two hundred dollars, and of the value of two hundred dollars, dated Freeport, January the eleventh, in the year of our Lord one thousand eight hundred and fifty-nine and payable six months after the date thereof, with ten per cent. interest from the date thereof, and payable to the said Robert C. Thomson or order. And the said Robert C. Thomson did then and there on the said eleventh day of January, in the year of our Lord one thousand eight hundred and fifty-nine, at said county of Stephenson, well knowing that the said pretences and representations were false, unlawfully, knowingly and designedly, by means of said false pretences and representations, obtain the said note of the said Levi Lucas; and with intent then and there to cheat and defraud the said Levi Lucas of the same; whereas, in truth and in fact, the said Robert C. Thomson was not then and there a person of knowledge, ability and skill in the art and science of surgery and eye and ear doctoring business and eclectic medical science and practice, and able and qualified to teach and impart the same to the said Levi Lucas; and whereas, in truth and in fact, the said Levi Lucas was not then and there able and competent to learn and acquire the art and science of surgery and eye and ear doctoring business, and eclectic medical science and practice. And so the jurors aforesaid, upon their oaths aforesaid, do say that the said Robert C. Thomson, by means of the false pretences and representations aforesaid, on the said eleventh day of January, in the year of our Lord one thousand eight hundred and fifty-nine, at said county of Stephenson, unlawfully, knowingly and designedly, by means of said false pretences and representations, did obtain the said note in the manner and form aforesaid, with intent then and there to cheat and defraud the said Levi Lucas of the same, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the same people of the State of Illinois."

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And afterward, on the 20th day of September, 1859, the defendant by his counsel, filed in said court his motion to quash the indictment in said cause.

And afterward on the 24th day of September, 1859, it being of the said September term, 1859, of said court, came on to be heard the defendant's

motion to quash the indictment, which said motion was overruled by the court, and to which ruling of the court the said defendant then and there excepted.

25th

And afterward, on the 5th day of January, 1860, it being of the December Term, 1859, of said court, said cause came on for trial, and one Hiram C. Best was called as a juror in said cause, and being examined under oath, touching his qualifications as a juror, said: "I conversed with a witness in this case," and "formed an opinion as far as I heard." "I believed what I heard." "I have not formed an opinion as to the guilt or innocence of the prisoner." "I formed an opinion as far as I heard." Whereupon said juror was challenged by the defendant for cause, but the court decided that the juror was competent, and refused to allow the defendant's challenge, to which ruling of the court the defendant then and there excepted.

Whereupon on the day and year last named, a jury came, &c., and were duly elected, tried and sworn to try said cause, and the following evidence was adduced by the prosecution.

26th

Levi Lucas.—Have known defendant something over a year; first acquaintance was, I took one of my children to be doctored for a sore eye. It was a year ago last summer, about harvest time; the first time we went he gave me some medicines, and we went back. Second time we went there, he said he could not cure the child right away, on account of sickness of the mother. He said he must doctor the mother awhile, and gave my wife some medicine. Thomson told me he could put me in a way of making an easier living than I was doing, by coming in with him, if I would come and learn his business. The second time I was there was in September or October, 1858. The time of the above conversation was the second or third time I went into his office; said he would ask me \$400 for learning it; told him I could not come at that time; said then I should wait and come some other time; was not there again to stay any time until late in December; told him before I commenced to study that I thought I was too old to learn it. He told me that I could get an easy living without hard work; that he was making \$30 or \$40 per day; that I could make an independent living. I said I did not want to take hold unless I could make a living; he said I could learn it; that he had known persons to learn the business in a very short time; said he would learn me the eye and ear business; he would charge me \$400, and I could earn that amount before my notes became due. The first note was given in October; then said I should come with him, and if I would give him the notes he would learn me; there was a writing between us at the time these notes were given; this was the first contract, and was reduced to writing; think I told him I had been out of my head, and wished him to notice whether I was affected by study; told him I did not feel altogether right at times; at that time didn't feel altogether well.—

27th

28th

29th

30th

31st

32nd

Dr. Thomson told me that Mohr said I was a fool for going into this arrangement; I told him maybe I was; if so, I wanted him to let me know it.—He said he believed it was not so; that I had as good reason as anybody; recollect nothing further as to that matter; said I should keep our bargains pretty much secret; said he would insure if I would go in with him in the last contract, it should all come right and I should not lose a cent; that if I would deed my land to secure him a home, he would lose his right hand before I should come to loss. He said he would pay all the notes that had been given up to that time, except \$1800, if he could get the deed for the house. The first note was \$400, and \$200 afterwards; our conversations were generally private; first went in his office in January; stayed three or four weeks; the last contract was made while I was in his office. I went on and tried to keep the books, and studied and read; he told me what to do, and seemed to think I was getting along pretty well; the first contract was for three months, the last for two years; last contract was in January; and I went with him under that; when we went into the new building I did not find things as they were before, and I could not stay.

He showed me how to make up different kinds of medicines; I couldn't keep the books to please him; it was to take down names, amounts received

and amounts paid out. The partnership accounts were kept in another book.

32nd

Question by State's Attorney: "What did Mrs. Thomson say to Dr. Thomson in presence of Lucas?" Objected to by defendant; objection overruled, and excepted to. Answer: "After we got into the new house it did not appear as it was before; I expected to have half of the house; he said he was willing if she was, but they both together objected." It was the understanding when the house was bought that I was to have the use of half the house; after the house was bought they objected; he said I should have the use of the house for two years, or he would provide well for me; said I shouldn't tell my wife about the \$200 note, as he would provide for it soon. The note has not been paid by me; the reason why I left was because I couldn't have room; he complained of my asking for money and help, and said I ought not to expect it so soon; got angry because I asked for money; said I expected too much; sometimes treated me very well; there was one \$200 note after the house was bought; there were four notes besides; the \$800 and \$200 note was after the last bargain; the last notes, except the \$200, were given for the house.

33rd

I went away and left him; I took it that Thomson and his wife were making fun of me; they were talking together and laughing. (Two notes submitted to witness.) They are two notes given by me for the purchase of the house. (Mortgage submitted to witness.) The mortgage was given at the same time. Notes offered in evidence; objected to by defendant on the ground that they are not proper evidence under the indictment; overruled, and excepted to by defendant.

34th

Another note offered in evidence; same objection; overruled and excepted by defendant.

37th

Witness resumes. Previous to the \$200 he had got the \$1800, for the house and lot, and \$425, in the fall; the \$200 was got after the house was bought; said I ought to give \$200 more; could keep it from my wife, and he could get the money any time; don't know that it has been paid; Thomson had one copy, and I had one of the first contract; I went into Thomson's office under the first contract, in December, I think; boarded and lodged at his house. (Paper submitted to witness.) It is one of the contracts between myself and Dr. Thomson; was made at the time it bears date. The contract is my own (witness') hand-writing; don't know whether Thomson or myself proposed to make the contract; a different arrangement from the first contract was made in January; don't know who first proposed it; he said he could do more for me if I could get a house for him; if I would get a house he would do all he could to keep me along; he suggested the Mohr house; don't remember who made out the deed from Mohr to Thomson; there was some difficulty in getting my wife to sign the deed; told him my wife would not sign it. He said that was bad, and I must try and get her to sign it; said I should never lose a foot of land by him, if I could get it arranged.

38th

39th

Q. "Was there anything said by Thomson how he managed with his own wife when he wanted her to sign deeds?" Objection; overruled; excepted to by defendant. Answer: He said his wife would do as he wanted her to in those matters. These notes (in evidence) were delivered to Mr. Mohr, to pay for the house Thomson occupies. Under the second contract I was there from the time it was made until February or March; occasion of my leaving was, I couldn't get along peaceably; when we made the bargain he said he would help me; he was angry when I wanted money. I held a note against him and got some money; he did not say whether it was to go on the note or not; was sorry I had given the \$200 note; Thomson said he would burn it if I said so. (Witness identifies \$200 note above referred to.)

40th

The second contract between witness and defendant offered in evidence, which was in hand-writing of witness Levi Lucas, and reads as follows:

41st

"Freeport, Stephenson County, Illinois, January 22d, A. D., 1859. Article of agreement made and entered into by and between Levi Lucas of

"the first part, and Robert C. Thomson of the second part, witnesseth, that the said Levi Lucas doth agree to pay said Robert C. Thomson the sum of eighteen hundred dollars in the following manner on a house and lot that said Robert C. Thomson bought of Jacob Mohr, in Freeport. He also agrees to assist said Robert C. Thomson in his office, to prepare medicine and assist him in his practice for the term of two years; he also agrees to clerk for said Robert C. Thomson, and to keep his books for him for the term of two years. The said Robert C. Thomson, on his part, doth agree to teach said Levi Lucas in all the different branches of his profession, as far as his abilities will admit; he also agrees to take him in as a partner in all business matters, and to let him have one-half of all the profits derived therefrom; he also agrees to let said Levi Lucas have one half of all his instruments, and all medicine and the furniture, and all the articles belonging to his office; he also agrees to take said Levi Lucas' son on his age, and to teach and qualify him for the same practice which said Robert C. Thomson herein practices; he also agrees to go into no speculation in trade or otherwise, until he has advised and consulted and agreed with said Levi Lucas as partner; he also agrees to answer to or pay all notes given to him by said Levi Lucas up to the present date, excepting two notes lately given to Jacob Mohr, calling for \$1800; he also agrees, in case of death under one year of said Levi Lucas, to continue to fulfill the aforesaid contract to said Levi Lucas, his heirs or assigns. As witness our hands and names."

"LEVI LUCAS."
"ROBERT C. THOMSON."

Witness resumes. The contract is in my own (witness) hand-writing.—Thomson said I should draw the writing as I was a good hand at it; there were several attempts made to come to an agreement before the contract was settled upon; I couldn't tell what was best to do; thought it was the best I could do to suit the times I was in; don't know that the language of the contract was dictated any more by Thomson than by myself: it was written as we talked it over.

After the contract was made, the first falling out was in about four weeks; Thomson wanted a receipt; Mrs. Thomson said I must watch him or he would cheat me; don't know whether it was in earnest or not; don't know whether it was before or after the \$200 note was given; that was the first that I had any alarm; there was a \$400 note out then besides the \$1800; said he had been making a good many bargains and wanted a receipt; I said I couldn't do that, and said he was very foolish for asking it; it was the first time I thought anything wrong; his wife said I must watch him or he would cheat me; she laughed when she said it; there was nothing more said about it. After we got into the new house I wanted to move in myself; I understood I was to have part of the house; he said he was willing I should have the room, but his wife was not; we couldn't stay together in peace.—He found fault with my book-keeping after we got into the new house; the final rupture was about keeping the books, and because he failed to give me money which he had promised me. These transactions took place in Freeport, Stephenson County, Illinois, excepting one time he came to my house.

Cross.—After the first contract I was in the office from time to time, till second contract was made; defendant never prevented my going there during that time; up to that time don't know that I found any fault with his instruction; I drew the second contract; was reading in the office when second contract was made; before this I saw him take in money; knew he had a practice, and that some people came a great distance to see him; saw this before I entered into second contract; declined to give Thomson a receipt because it might interfere with our previous arrangements.

Thomson refused to help me according to his promise. He did have to pay a Deed of Trust that was on the house, and said he would keep his money to pay that; think he violated the written agreement. He objected to having my name appear as a partner; he said it might injure the business; I understood that I was to be a partner from the start, and have

half of the money on the notes; asked him for a settlement and for money, and could get neither. There were notes that came in after this. Thomson said I might take the notes and collect them if I could. The notes were in the office. I have an interest in getting back this property. (Bill in chancery in case of Lucas vs. Thomson submitted to witness.) I signed the bill and think I swore to it.

5-9. The record was here offered in evidence on the part of the people, to prove Deed, Jacob Mohr to Robert C. Thomson; (objected to by defendant on ground of insufficient notice; notice was given at ten o'clock, A. M., yesterday; also on ground of variance between the record and allegations of the indictment; also generally—objection overruled; exception by defendant.)

5-1. John H. Addams.—Known Levi Lucas since 1844 or 1845; not acquainted with Dr. Thomson. Lucas' mind has been somewhat out of order since I have been acquainted with him. (Defendant objects to any testimony of unsoundness of mind of Lucas, except at the time of the transactions in suit—objection overruled and exception by defendant.)

Witness resumes. Think in 1845 Lucas gave me a scolding because we were going to build a school house. From the character of his remarks there was something wrong with him; thought there was something wrong in the manner he got along with his work. He applied to me to become a school teacher and I put him off. He is a good neighbor, honestly disposed and conscientious. I thought peddling books two or three years ago unsettled his mind; think I have observed strangeness of action within a year or more. Sometimes he is exceedingly cheerful, at other times much depressed; has complained at times of being sick. I had a child die about a year ago. It died in the evening, and he stayed at my house all night; thought that was very singular; think a stranger would sometimes notice his peculiarity, at other times not.

5-2. Cross.—Lucas during this time held public office; was road master, and think he was School Director; have dealt a little with him, and sold him one lot; he owes me about \$150; have seen Lucas's name on tickets as a candidate for office; did business for him as I did for other people.

5-3. Josiah Clingman.—Have been some acquainted with Levi Lucas for twenty years; think him honest; couldn't give any definite account of his mind; think he is not a man of very strong mind; don't think he is an idiot or crazy; don't know whether his mind is unsound. A good many years ago, when they were building the Railroad, he was opposed to it; compared the Railroad with the canal in Ohio, and gave reason for difference in the price of grain; don't think I have seen anything peculiar in Lucas in the last two years.

5-4. Cross.—Have had a little business with him, and did it just as I did with any other man

5-5. Cordelia Lucas, wife of Levi Lucas.—(Defendant objects to witness, on ground name not on back of indictment, and, also, that wife of Levi Lucas, not competent witness; overruled and exception.) Witness is wife of Levi Lucas; became acquainted with Dr. Thomson year ago last September; he doctored in the family; told Thomson my husband was not capable of learning medicine; said he had been out of his head; don't remember when I told him. I told Thomson he should release him from his obligation. He said he didn't want me there making a fuss. He said the land should not be sold. Lucas called his children before he went away; said he was not going to return, and slapped my jaws. Lucas went to Thomson's to stay first Monday in January. Lucas has not been to an insane asylum to my recollection. Q. "What was the state of Lucas' mind for the last two or three years?" (Objection by defendant. Objection overruled and exception.) Ans. He was capable at times and sometimes not.

5-6. Cross.—At the time I was at Thomson's house, he said he didn't want me there making any trouble; he would do as he agreed.

5-7. Adrian Lucas.—Lucas was taken to an insane asylum eighth August, 1831. (Defendant objected to any evidence of insanity, except at the time of transactions in suit. Overruled and exception.) When he came here thought

his mind pretty well settled. He seemed prospering. About two years ago he got a book agency and hired young men to peddle books for him. The manner he got the Cedarville property made me think him very injudicious as he could not have got out of it without help. Sometimes he is all for trade and at other times dejected and won't do anything.

5-9
60. *Cross.*—Think Lucas has lived in Cedarville about three years. When he went there he had five eighties of land. His purchases in Cedarville amount to about \$450. The five eighties of land worth about \$20 per acre. He has other property to the value of \$400 or \$500.

61. *Thomas Bullock.*—A year ago last November saw Thomson; asked me what Lucas was worth; asked me to tell Lucas he wanted to see him. Three weeks after he told me Lucas had entered into partnership with him; didn't think Lucas was altogether right in his mind. A year ago Lucas wanted to borrow money of me to pay his tax; said he had some wheat, and when it was threshed he could pay me; his wheat was not good. Last June he came to my house to get some potatoes. I said I had only a bushel and I discovered he was out of his right mind. Four or five years ago I was Road Commissioner with him; he got very angry one day with the clerk after we finished running out a road, and I discovered his mind wasn't right. I paid money to the Doctor; last time \$10 00.

62. *Cross.*—Am a relation of Lucas; Dr. asked me if Mrs. Lucas interfered with his business a good deal; told him I thought she did; told the Doctor that Lucas was a clever fellow.

Thomson Wilcoxon.—Known Lucas a long time; was raised in same neighborhood; saw Lucas on a steam boat; they had him on the upper deck; discovered that his mind was entirely gone; that was in 1831, or 1832; haven't been very intimate with him in this country; spoke to me three or four years ago about having a book agency; thought his mind wasn't entirely right, but couldn't say positively.

Chancellor Martin.—Am a physician; know Dr. Thomson partially; it would ordinarily take not less than three years, I think, to enable one to learn eye and ear doctoring so as to practice; have seen a few of the cases Dr. Thomson has treated; don't think they were well treated; (objection by defendant; overruled and exception,) those I saw might have been the worst cases, but think they were badly treated; shouldn't think from my knowledge of the cases I saw, that he was qualified to teach eye and ear doctoring.

63 *Cross.*—I referred to Garner's case; he had what I call opacity of cornea, and inflammation of the lids; had no cataract; I assisted in treating him; Garner was sixty or seventy years of age; his case was of a great many years standing.

64 *Dr. E. C. DePuy.*—Have met Dr. Thomson; am a physician; not particularly acquainted with Thomson's practice; don't know whether he is qualified to teach eye and ear doctoring; have seen some cases where his patients were benefited by his treatment, others that were not; some cases that I approved of the treatment, and some perhaps I did not; but he might not have finished his treatment; has his way and I have mine.

65 *Cross.*—I told the man, in the case I spoke of, that he ought to have had more of the same treatment.

Dr. B. T. Buckley.—Am a physician; it is customary to study three years; the eye and ear treatment is one of the most delicate branches of the profession; but a small portion could be imparted in three months.

Cross.—Generally study three years, and attend a course of lectures, and then practice in all diseases.

W. W. Robey.—Know Levi Lucas; not so much within last three years as before that; can't say I know anything particular about him; never regarded him as a sane man, but can't say why; can't state any facts.

66 *John A. Clark.*—Think Lucas generally came to me for legal advice; don't recollect doing business for him until the chancery suit; it was at my suggestion Meacham and Bailey were employed to bring the chancery suit

against Thomson; Thomson is now living in the brick house on Galena street.

66. *Cross.*—Don't know whether it was State's Attorney or myself first suggested the indictment; Meacham and Bailey were employed in the chancery suit to recover back the property from Thomson; that suit is now pending; Mr. Crain and I signed stipulation to dismiss chancery suit, and the State's Attorney signed stipulation to dismiss indictment; (stipulation submitted to witness) this is the stipulation of myself, Mr. Crain and the State's Attorney; the date, I believe, was the time the instrument was executed; can't explain the dates further than they appear.

67. *I. G. Bedee.*—Value of the house Thomson lives in about two thousand dollars.

Mr. Pollock.—Think the notes were worth their face when given; one \$800 the other \$1,000; think \$200 note was worth its face; record of deed of Thomson to William Shortt offered in evidence by prosecution; record proved by Guiteau, Clerk; Deed was left in Clerk's office by Thomson; (this was a deed of the house and lot from defendant Thomson and wife to William Shortt.)

TESTIMONY FOR DEFENCE.

70. *The* The defendant offered the stipulation proved by witness Clark. First by the stipulation signed by John A. Clark, Attorney for L. Lucas, and J. A. Crain, Attorney for Robert C. Thomson; it is agreed that upon the surrender to Levi Lucas of his two notes for \$1,000 and \$800, and the discharge of the mortgage given to secure the same, or the conveyance in fee, free of incumbrances, of house and lot purchased of Jacob Mohr and conveyed to Robert C. Thomson and now occupied by him (except an incumbrance of about \$75,) to said Lucas; Lucas would execute and deliver to Thomson a full release and discharge of all action and causes of action; Thomson to surrender notes and mortgage or make conveyance aforesaid.

Dated Freeport, April 12, 1859.

72. Then follows stipulation of State's Attorney as follows: "I hereby agree that upon the settlement between said Lucas and said Thomson as above, I will enter a nolle prosequi upon an indictment found by the Grand Jury against said Thomson." U. D. MEACHAM, State's Attorney.

Defendant then read in evidence a copy of the contract heretofore set forth between Lucas and Thomson, dated January 22d, 1859, also the following receipt:

"January the 24th, 1859. }
Freeport, Stephenson county, Illinois. }

73. Settled up to this date by giving note and drawing and signing articles of agreements, as witness our hand and seal."

"LEVI LUCAS, Seal,"

"ROBERT C. THOMSON, Seal."

74. Defendant then offered in evidence a letter written by Levi Lucas to defendant Thomson, dated February 26, 1859, requesting defendant to send down medicine for a child of Lucas, then sick, also to send him medical books, stating he should come up to Thomson's as soon as the son should get better.

75. *Joseph Norris.*—Known Levi Lucas twenty years; never knew of his being of unsound mind; never heard such a thing suggested until lately; I was seven months under treatment at St. Louis; came to Dr. Thomson in November; he has helped me much; was under a celebrated physician's care in St. Louis; have been with Thomson nearly two months.

Isaac Haas.—Known Lucas sixteen or seventeen years; never noticed anything unsound about him; knew Lucas was Commissioner of Highways, and stood between parties in dispute about laying out a road, and arranged matters and acted the part of a sensible man.

76. *William Dove.*—Have seen Dr. Thomson and Levi Lucas; was present at Hibbard's office; Lucas came in; spoke in reference to leaving Thomson; he said he did think at one time that he should like to practice medicine,

but when he came to see the amount of study, and the number of books to be read, and when he found out what the practice was, he came to the conclusion that he did not want to do it; this conversation took place about the 1st of October last.

77 *Mr. Lull.*—Have been in Dr. Thomson's office as a student; I was there before Lucas came and until after he left; Never saw any treatment from Thomson to Lucas but what was just and kind; Lucas boarded with Thomson a good part of the time, and slept with witness; Thomson took in some days \$10, some days \$15 to \$20; recollect one day \$37; some days not so much; I know of a man coming from Kansas to be treated by Dr. Thomson; don't know the average of Thomson's receipts; he charged some in his books, and took notes.

Cross.—Patients came there very frequently; saw them pay him money while Lucas was there; can't tell what it would average.

78 *James M. Smith.*—Known Lucas eight years; never known any unsoundness of mind about him; never heard anything of that until within a month.

Samuel B. Harris.—Known Lucas since 1849 and 1850; never saw any indications of unsoundness of mind about him; Lucas traded in a store that I was in, in Cedarville; am now in business here.

79 Whereupon the Jury retired to consider of their verdict, and afterwards, on the 7th day of January, 1860, returned into court the following verdict: "We, the jury, find the defendant guilty," and thereupon the defendant moved the court for a new trial, and in arrest of judgment, for the following reasons, to wit:

80 1. Because the verdict is contrary to the evidence.
2. Because the verdict fails to do substantial justice between the parties.
3. Because there is a variance between the proof offered in evidence and the charges in the indictment.

4. Because there was no sufficient evidence that Levi Lucas was of unsound mind at the time of making the contract.

81 5. The court erred in admitting proof of the unsoundness of mind of Levi Lucas seventeen years previous to the time of trial.

6. The court erred in admitting any testimony of the unsoundness of mind of Levi Lucas at any other time than at the time of making the contract and agreements with defendant.

7. The court erred in admitting the record of the Deed from Jacob Mohr to defendant, without any proof that the Deed was in defendant's possession and without sufficient and legal notice having been served on defendant to produce the Deed.

8. Because the court allowed plaintiff to introduce parol testimony to vary and contradict the written contract between Lucas, the prosecuting witness, and the defendant.

9. The court erred in not confining the plaintiffs in their proofs to the written contract between prosecuting witness, Levi Lucas, and defendant, or to conversations between Lucas and defendant, subsequent to the date of said contract in relation to the same.

10. The court erred in permitting the witness Cordelia Lucas, wife of Levi Lucas the prosecuting witness, to testify on the trial of this cause, and her name does not appear on the back of the indictment.

82 11. Because the proof shows a Deed of Jacob Mohr to defendant, and not from Levi Lucas, or that Levi Lucas was the owner of the property.

12. Because the evidence shows that there was no criminal intent in the contract between prosecuting witness and defendant.

13. The court erred in not allowing defendant's challenge of juror Hiram C. Best for cause.

And in arrest of judgment the indictment should have been quashed, and judgment should be arrested because—

1. Indictment does not aver and charge that Thomson knew that prosecuting witness was of unsound mind, and incapable and disqualified to learn the art and science of surgery and eclectic medicine, and eye and ear doctoring at the time of making the contract.

2. Because the indictment does not show fraudulent intent on the part of the defendant, and it does not appear from the indictment that the transaction was any fraud upon Levi Lucas.

83 3. The indictment shows upon its face a contract between the parties, on which a complete remedy can be had in a civil suit.

4. The indictment does not show whose property the notes, Deed and real estate were, and does not show them to be the property of Levi Lucas.

5. The indictment shows a promise on the part of defendant to do an act in future, and no false pretense will be presumed until the time for the performance of the act has expired and an indictment will not, in such case, be sustained.

6. The indictment shows that prosecuting witness, Levi Lucas, has an adequate remedy in a civil action if any fraud was practiced, and the indictment for false pretenses cannot be sustained.

84 7. The indictment does not charge that defendant knew that Lucas was incompetent to learn the art and science of surgery and eye and ear doctoring and eclectic medical science and practice.

8. The indictment avers that the choses in action, money, goods, wares, and effects and other valuable things were the property of the people of the State of Illinois, and does not aver that they were the property of Levi Lucas at the time of obtaining the same.

And because the indictment is in other respects informal, uncertain, insufficient and indefinite.

85 And afterwards, on the 2d day of February, 1860, the said motions of said defendant for a new trial, and in arrest of judgment came on to be heard, and thereupon the said motions were overruled by the court.

And the court thereupon rendered judgment upon said verdict against said defendant, and imposed a fine of five hundred dollars upon said defendant, and sentenced said defendant to six months imprisonment, and to pay the costs; and to stand committed until said fine and costs were paid.

To which ruling of the court, in overruling the said defendant's motions for a new trial, and in arrest of judgment, and in rendering judgment and pronouncing sentence upon the said defendant as aforesaid, the said defendant then and there excepted and now assigns the same for error.

Errors assigned on the record—

And the said defendant assigns the following errors :

87 1. The court erred in overruling defendant's motion to quash the indictment.

2. The court erred in refusing to sustain the defendant's challenge for cause of the juror Hiram C. Best.

3. The court erred in permitting illegal testimony to be given to the jury.

4. The court erred in excluding from the jury legal testimony offered by the defendant.

5. The court erred in overruling defendant's motion for a new trial.

6. The court erred in overruling defendant's motion for arrest of judgment.

TURNER & INGALLS, for Plaintiff in Error.

9
Robert C. Shinn

vs
The People

12921

Filed Apr. 5, 1860

L. Leland
Clerk

State of Illinois } Third Grand Division,
Supreme Court } April Term A D 1860

Robert C Thomson App^t }
vs } Error D Stephenson
The People of the State of Illinois }
App^{cs}

And now comes
the said People & by W Bushnell
their Atty., and say, that there
is no error, nor manner of error
in said record or proceedings
Wherefore they pray judgment &c
W Bushnell
States Atty.

Supreme Court-
9

Thomson

vs

the People &c

founder in error

Filed Apr 19, 1868

Leland

Clerk