

No. **12102**

Supreme Court of Illinois

Barber Bill, Impleaded with
Samuel Carr.

vs.

People.

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

Beas before the Honorable Robert
S Wilson Recorder of the City of Chicago and President,
Judge of the Recorder's Court of said City at a Term
thereof begun and held at the Court House in said
City, County and State aforesaid on the first Monday
being the fourth day of July in the year of our
Lord one thousand Eight hundred and fifty three
and of the Independence of the United States the Seventy
Eighth

Present Honorable Robert S Wilson Recorder
Samuel McKim State Attorney
Cyrus P Bradley Sheriff
Philip A Hyman Clerk

And now on this fifth day of July in the year last
aforesaid, said days being one of the days of said Term
of Court the Sheriff returned into Court the venire
issued by order of the Court for a Grand Jury created
by summoning the following named persons to wit
Isaac L Miller Charles Douglas Simon Duple
Benjamin F Haddock William H Adams George W
Robt Horace Hester George R Hartack Andrew
Blackie George W Reynolds Jeremiah W Duncan
Charles Hingus B W Thomas John B Weir

William Sawyer D C Thatche R A Pinkham J W
Strand M S Keith Seth Wadhams Hugh Mahan
Charles Chronin and W W Jackson who upon being
called answered to their names as follows to wit

Samuel W Duncan Seth Wadhams Isaac S
Milliken Simon Doyle Benjamin S Haddock W
A Adams Geo W Cobb St H Gates Andrew Blainie
George W Reynolds John B Wier William Sawyer
D C Thatche R A Pinkham J W Strand M S
Keith Hugh Mahan Charles Chronin W W Jackson
Charles Douglas and George R Haddock and gave
their attendance as Grand Jurors at this term in
and for the body of the City of Chicago County and
State aforesaid and the Court having appointed
Isaac S Milliken Foreman and they being duly sworn
as a Grand Jury in and for the Body of the City
of Chicago in the County of Cook and State of
Illinois and they having received the Charge of the
Court returned to consider of their presentments

And now on the Eleventh day of July in the year last
aforesaid said day being one of the days of said term
of Court the Grand Jury came into Court and
among other presentments, made the following one
and viz a true Bill to wit

The People of the State of Illinois
21
Samuel Carr Catharine Carr and Warner Rice alias } Indicted for
Robbery

which indictment was in the words and figures as follows to wit

State of Illinois
City of Chicago
Cook County } ss

Of the Daily Term of the Recorder
Court of the City of Chicago, in said State and County
in the year of our Lord one thousand Eight hundred
and fifty three

The Grand Jurors chosen selected and sworn
in and for the City of Chicago in the County of Cook
and State of Illinois in the name and by the authority
of the People of the State of Illinois upon their oaths
present that Samuel Cass, Catharine Cass and
Barth Beto alias - City of said City on the tenth
day of July in the year of our Lord one thousand
Eight hundred and fifty three in the City of Chicago
in the County and State aforesaid in and upon one
Samuel S. Connor in the face of the said People
then and there being, did then and there unlawfully
feloniously, forcibly and by intimidation make an
arrest and then and there one Barth Beto for
the payment of five dollars and of the value of five
dollars of the personal goods of the said Samuel
S. Connor then and there being, then and there
feloniously, violently, forcibly and by intimidation from
the person and against the will of the said Samuel

I Enrolled said Act and that not to be and carry
away contrary to the Statute and against the peace and
dignity of the same People of the State of Illinois

Amiel M^{re} Huy

State Atty

which said indentment was endorsed as follows to wit^h

Recorder Court of the City of Chicago July Term
1853 The People of the State of Illinois vs
Samuel Crane et al. Indictment for Robbery &
Arson &c. J. S. Mulvren Foreman of the Grand
Jury

Witnesses Samuel S. Conover Allen Parkington

Robert Lawton Jack Rob. Jenny

Omaha July 11 AD 1853

PA Noyes Clerk

And now on this Tenth day of July in the year
y^e last aforesaid said day being one of the days of
said Term of Court the following proceedings were had
in the Cause which are ⁱⁿ the words and figures following;
to wit;

The People &c

By

Samuel Carruthers

Cur and Barber 1844

Alas &c

Robbery

The said defendants as well in their own proper persons
as by their Counsel also comes, and they being furnished
with a copy of their Indictment, a list of the Jurors and
Petit Jurors and they being severally arraigned and
forthwith demanded of said Court concerning the crime
alleged against them in the said Indictment how they
would answer themselves for Plea in the behalf severally
say they are not guilty in manner and form as they
are charged in the Indictment and of this they put
themselves upon the Country and the people do the like

And now again on the Twelfth day of July in the
year last aforesaid. Said day being one of the days of
said Term of Court the following proceedings were
had in this Cause to wit

The People v.

^{vs}
Samuel Caw Botham Robbery
Caw and Barber & Co
alias

And now again comes the
said People by Samuel H. May and the said
defendants as well in their own proper persons as
by their Counsel Messrs Phelps & Miller also come
and after being sworn between the parties hereto it is
ordered that a Jury come, therefore comes the
Jurors of a Jury of good and lawful men

to wit

Noah Murtreant

Nathaniel Gould

W S Stebb

J L Hunt

S W P Davis

M B Smith

Samuel M Ward

Crastus Brown

George M Higgins

David F Lake

J Tyler and

Ezra Backler

who being duly elected tried and sworn well and truly to try the issue joined between the parties according to law and the evidence and they hearing the testimony of Witnesses and a portion of the arguments of Counsel the further hearing of this cause was postponed until the coming in of the Court tomorrow morning

And now again on the thirteenth day of July in the year last aforesaid the said day being one of the days of said term of Court the following proceedings were had in this cause in the words and figures as follows to wit

The People vs

^{vs}
Samuel Carr Catharine Carr and Parker Pett alias

Robbery

And now again comes the said People by Francis M. Gray States Attorney and the said defendants as well in their own proper persons as by their Counsel Messrs Phelps & McEiv also comes and the

Now appeared also comes and they hearing
further arguments of Counsel and the instructions
of the Court, retire in Charge of a sworn officer of
the Court to consider of their verdict and afterwards
come into Court and say We of the Jury find
the defendant Samuel Carr not guilty in manner
and form as he is charged in the Indictment - We
find the defendant Barber Will alias - guilty
in manner and form as he is charged in the Indict-
ment we find the value of the property he Two Dollars
and fifty cents and on for the term of the imprison-
ment of the said defendant Barber Will alias - at three
years in the Penitentiary of this State at Alton, -
And we of the Jury cannot agree upon a verdict in
relation to the Charge set forth in the Indictment against
the said defendant Catharine Carr, and asked
to be discharged Thereupon it is ordered by the Court
that the Jury be discharged, and that the said defen-
dants Barber Will alias - and Catharine Carr
be remanded It is further ordered that the defendant
Samuel Carr be discharged and go hence without day
And now comes the said defendants by their Counsel
and move for a New Trial in this Cause

And Now again on the fourteenth day of July
in the year last aforesaid said day being one of
the days of said Term of Court the following proceed

says we had in this cause to wit
The People &c

Barber & Bell alias impo
with Samuel Carr and
Catharine Carr

Robbery

And now again comes the
said defendant ^{as well in his own proper person} by his Counsel Messrs Phelps and
McLure ^{also} and in the motion filed herein for a new
trial in this cause it is ordered by the Court that
the said Motion be overruled to which overruling the
said ^{defendant} Counsel by his Counsel excepts.

And now again on the day and year last aforesaid
the following proceedings were had in this cause which
are in the words and figures following to wit

The People &c

Barber & Bell alias impo
with Samuel Carr and
Catharine Carr

Robbery

And now at this day
against comes the said defendant, as well in his
own proper person as by his Counsel Messrs Phelps
and McLure also comes, and neither the said
defendant nor his Counsel for him saying anything
further why the Judgment of the Court should not
now be pronounced against him as the verdict

of guilty heart fore rendered in this cause

It is ordered and adjudged by the Court that the said defendant Barber & Bell alias - be taken from the Bar of the Court to the Common Jail of Herk County, from whence he came and from thence by the Sheriff of Herk County within fifteen days from the date hereof to the Penitentiary of this State at Alton and be delivered to the Warden or Keeper of said Penitentiary and the said Warden or Keeper is hereby required and commanded to take the Body of the said defendant Barber & Bell alias, and confine him in said Penitentiary in safe and secure Custody for and during the term of three years from and after the delivery hereof, thirty days of said term in solitary confinement and the residue of said term at hard labor and that he be thereafter discharged

It is further ordered by the Court that the said defendant pay the Costs of this prosecution and the people have execution therefor

The following instructions were given by the Court to the Jury on the part of the People

That if the Jury shall believe from the evidence that the defendant Mrs. Caw was present aiding abetting and assisting the defendant Mark Wile in the commission of the offense under the circumstances as charged in the indictment then she is to be deemed as a principal offender

If the Jury shall believe from the evidence that the Mark Wile mentioned in the indictment was in the possession of a sword and that Caw was the owner thereof and that the defendant by intimidating Caw and putting him in fear of bodily injury feloniously took from her person the said Mark Wile as charged in the indictment and while such intimidation and fear was upon him, then such a taking is in law the Crime of Robbery and the law is for the People

That in all cases where the testimony of witnesses is conflicting it is the peculiar province of the Jury to determine the degree of ~~the~~ credibility to which each witness is entitled and in determining the matter of Credibility, the manner of the witnesses upon the stand, the consistency of the narration, their memory of circumstances attending the transaction

the want of recollection attending the transaction, which if they happened, happened very recently, are matters which the Jury may weigh, and consider in determining such credibility, together with the position and relation that such Witnesses may bear to the parties by whom they are called upon to testify.

Barber Bids impleaded with
Samuel Law & Catharine Law
ad
The People of the State of Illinois } In the Recorder's Court of
the City of Chicago for the
July Term A.D. 1853

Be it Remembered That at the
Tria of the above cause the following testimony
was introduced to wit in behalf of the People
Samuel S. Connor and in behalf of the defendants
Anna Beck & Louis Lynn were sworn & testified
as follows

The said Connor testified that he is the
Saler & ex officio deputy Sheriff of the City of
Milwaukee - that about ten or eleven o'clock on
last Sunday Morning he went to the Anna Connor
as Sam Law's on the Plant Road south of the
City and of the Toll gate in search of persons
who had escaped from Milwaukee, that he drove
up to the house with his horse and Buggy alone,
but that his horse entered the house, that when he went
into the Bar Room he entered by the front door and going
up to the Bar, he asked for a beer and then down ~~as~~ a
Shilling for it, is sure it was a Shilling that Master
Belward a girl were in the Bar room, that the girl
then asked him if he would treat - He asked her if
she drank beer, to which she replied that she did
when she could get it - that he then ^{said} ~~said~~, that
is a Shilling and you may drink out of that

She then made some motion to Barber (Belle) who
was behind the Bar, when he handed her a Bottle
supposed to contain Champagne wine - That he
(deponent) then told both the Barkeeper and the girl
that he would not pay for the wine - That he told them
two or three times that he would not pay first, that he
did not order it, and that they could not come, such a
game over him - Barber (Belle) then opened the Bottle
and the girl drank some of the Wine - That Barber
(Belle) then said to the Deponent that he (deponent)
must pay for the wine, to do which he refused - That
Belle then jumped across the Bar and Swore by God
he must pay for it - That Deponent again refused to
pay - that Belle then shut the front door behind
the deponent and advancing with a glass bottle
in her hand said "By Jesus Christ if you don't pay
for the wine I'll cut your damned liver out and that
he would take his life if he did not pay, that some
other words of like Character were said - that at the
stage of the dispute Catharine's (Carr) came on and
he thought one or two others - that another man was at
the door leading into the other part of the house,
that deponent having fear of the consequences asked if
he must pay the money - to which Belle answered
yes - and Mrs Carr said that if he came to a
whore house he must expect whore house treatment
that he deponent then handed Belle a five dollar
note, protesting against payment, that Belle

took the robe and went behind the Counter and got
the change and gave it to defendant that defendant
then went away, that Mrs. Law said on his going
out, that she supposed he came to see the girls,
that she had some good looking ones, that she
kept fretting and that he had better go at
Stam, to which he defendant, answered that he had
a wife of his own and did not take the need

Cross examination

Was in the house altogether about ten or fifteen minutes,
did not call for any liquor, nor drink any in the
house - is sure he did not order the wine; and did
say to both Bill and the Girl that he would not
pay for it before it was opened at all, that the girl
started to go out of the Bar Room with the Bottle of wine
in her hand, that she came back and set it on the
Counter, when Bill opened it, and the girl drank
some of it, that he then and before said that he
would not pay for it, that there was no other per-
son in the room, that he thought no other person could
have been there without his knowing it - that Bill
climbed across the Counter with a bottle in his hand
and told defendant, that he must pay for the
wine, or he would cut his damned liver out - that
Bill went behind defendant and shut the door
that Bill stood near defendant with the Bottle
drawn in his hand, but made no attempt to

Stu W - that the defendant then drew out of his pocket a Buck Knife (which was shown to the Court) that at the stage of the dispute Mrs Can entered that defendant did not give Mrs Can the Money at all - that he did not lay it on the Counter at all - that he gave it to Barber, Bell - that Mrs Can did not give him the Change - that Bell went behind the bar and gave him the Change - that he told them when they took the money, that if they took it they must take the consequences - that Bell took it and gave him the Change, that when the girl went away with the bottle, he did not say that he would not pay for the wine, unless she came back and drank the wine at the Bar - did not drink any of the wine at all - did not call for drink when he came in, did not drink any liquor in the house, said that he was an officer when he was about to leave the house - that he did not say so before that time - that he did not say when first asked to pay for the wine, that he was an officer and could show his papers - that he did not put his hand in his pocket under pretence of showing her papers and pull out a Buck Knife.

After Anna Bell gave her testimony Coroner was recalled and said that he did not see the girl Anna Bell in the room in the forenoon. Saw her in the Parlor in the afternoon when he went back - that she was then under the

influence of liquor - that she could not have been
in the Bar Room in the morning with a child without
his seeing her - was at Court but late - on the
morning of Sunday or in the afternoon accompanied
by Deputy Sheriff Pinkerton

Anna Benson on behalf of the defendant testified
that she went in a Hack to Sam Carrs on last Sunday
morning about nine or ten o'clock in the forenoon
that she saw the man Connor come into the house
alone, that she and the woman whom she knows as
Margaret and Barker Bell were in the Bar Room when
Connor came in - that he stepped up to the Bar
and asked for something to drink - that he drank
some brandy - that Margaret asked him to treat
her which he agreed to do, that Stephen also ask
ed him to treat her, which he refused to do, stating
that one woman at a time was enough for him to treat
- that Margaret got a bottle of wine and started
to go to her room with it, when Connor said that if
she did not bring it back and drink it at the Bar
he would not pay for it - that she then brought
it back & set the bottle down on the Counter, when
Barker Bell opened the Bottle of Wine and
both Margaret and Connor drank some of the wine
together - don't know whether they drank it all or
not - that soon after Connor threw down ten
Cents on the Counter to pay for the liquor

the Bill then told him that was not enough, that
Bill demanded twenty shillings which Connor refused
to pay stating that the price was too great - Bill
told Connor that he must pay it - when Connor
said that he was an officer and could show his
papers - Bill said he did not care what he
was, he must pay for the wine that Connor
refused, and drew out of his pocket a large
dick Knife after some further dispute, Connor laid
a five dollar Note on the Counter - precisely at the
Stage Mrs Carr came in - She stepped up to the
Counter looked at the Note and pronounced it good
and put it on her pocket, that she took out of her
pocket notes and silver Change which she handed
to Connor and he took it - does not know how
much - Mrs Carr handed back money ^{and}
Change - Wants it was Notes and Silver - Barber
Bill then received the Note & gave any change or part
due of it - No person came to the door with Mrs
Carr nor into the Room - No man was about the
house that she saw at all and thinks that she
could have seen any man if there had been any about
Is sure that Mrs Carr did not come into the
Room until after Connor had laid the Bill on
the Counter of the Bar, Is sure also that Barber
Bill did not receive the bill and did not change it
Is sure that Mrs Carr did both receive and change the Bill

Cropper arrived

Letter of Mrs. Carr came this last Sunday Morning
about nine or ten o'clock, stopped at the Hamilton
House in Chicago, a Hack man with a two
horse carriage took her to Sam Carr's house
and not herself pay her bill at the Hamilton House
she gave the money to the Hackman, I don't get
the Baggage and he paid the Bill, Court Buffalo
from Chicago, has been slightly acquainted with Mrs Carr
for four or five years, has not conversed with either Mrs
Carr or Sam Carr, about this prosecution is about
the evidence she should give, has not spoken a half a
dozen words with Samuel Carr since she went to the house
Has not spoken with either of the Counsel engaged in
the defence about the case or what evidence she should
give except a few words spoken with the Senior Counsel
since she came into Court (has not spoken with
Mr or Mrs Carr or any person in their house one
word about this case, is quite sure of that, was
in the Par Room with her child when Emma came
in, heard Margaret ask him to treat her said
he would - the Bar Keeper handed down a Bottle
of Champagne wine - Margaret said she drank
Wine - Margaret stated to go with the Bottle
to her room - Commented her to come back and
drink it at the Bar or he would not pay for
it - she came back and set it on the Counter

The Parker family and they both my Cousin
& Margaret drank some of the wine - did not know
whether they drank it or - did not go to get any of
it (my apartment) because Lemore refused to treat her
and she thought it would be interesting - thought
that if Lemore was a gentleman he would have asked
her to drink & does not think it interesting to ask
a gentleman when he comes into the house to treat
her, is accustomed to do so, but would think it
interesting to ask to drink after she had been refused
So sure that Emma and Margaret drank the wine together
Pauline drank it, was a good deal frightened when she
saw Lemore take out his knife, Lemore came to
the house again with an officer, about the same
afternoon, when Lemore (she pointed him out when
he sat among the members of the bar) that Emma & Emma
think he came next day with an officer to the house
may have been in the forenoon, may have been in the
afternoon - may have been Monday or Tuesday,
do not know exactly the time, is sure he was at
Emma's house twice at any rate - may have been oftened
Margaret who drank the wine is at home & is
in bed - saw her this morning - she has not been
out of bed since Monday morning her face is so
swollen on the one side as to close one eye and a
violent pain in the face, she was not able to come here
to day, thinks she has again in the face & suppose
that is what it is called

Louis Lynn being sworn for the defence deposed
that he left Sam Leans house in company with
Leans about nine o'clock A.M., that they did
not return until about four o'clock P.M. Anna
Bent was not at Leans when he left in the
morning but met her going to Leans, when he
and Carr were going to Town, Mrs. William Anna
Bent about six years knew her in Buffalo she
lived in Evans Street about forty rods from the
fire ponds and with her sister at an Irish
Boarding house - It was not a whore house
After Leans had been recalled Louis Lynn was
recalled and testified that he saw Anna Bent
at Leans in the afternoon that she was not
intoxicated, never knew her to drink Strong liquor
so sure she never drank Strong liquor, knew her
for six years and never knew her to drink liquor
or to be intoxicated The foregoing is all the
testimony that was given in the case

In the course of the argument for the defendants
the defendants Counsel stated to the Jury that
the evidence was that the defendant Cattell was
and not come into the Bar room where the scenes
described by the witness occurred until after
the time the prosecuting witness Leans had laid
the money on the counter of bar when the

Court interrupted the defendants Counsel and
Stated to him in the presence and hearing of the
Jury that such was not the evidence in the Case
In which defendants Counsel expected

Counsel Instruction for the people on Page 11)
In which Instructions for the people given by the Court
as prayed by the attorneys for the people, the attorneys
for the defendants expected

~~Instructions asked by the defendants
1st If the Jury believe from the evidence that the
man ^{who is called} Barber Bill ^{did not} receive the money
Charged to have been taken and never had it in his
possession then the law is for him and he should be
acquitted which instruction the Court refused to give as prayed
for but gave it with the following~~

~~2^d If the Jury believe from the evidence that Barber
Bill received the payment of the money~~

Instructions asked by the defendants
1st If the Jury believe from the evidence that the
man who is called Barber Bill did not receive
the money Charged to have been taken and did not
have it at all in his possession then the law is for
him and he should be acquitted - which instruction
the Court refused to give as prayed for but gave it

with the following addition or amendment to wit:
"provided they shall believe that he did not by threats
and intimidation cause the Complainant to part with
her money?"

2^d If the Jury believe from the evidence that
Catharine Carr received the money, as she supposed
in payment for the land which her Keeper had
sold then the law is for her and she should be
acquitted, which the Court refused to give, but gave with
the following addition or amendment to wit: "if she
received it innocently not knowing it was paid unwillingly
and by means of intimidation"

3^d If the Jury believe from the evidence that Mary Carr
never had the money in her possession at all then the
law is for her and she should be acquitted which the
Court refused to give but gave with the following addition
or amendment to wit: "provided she did not aid and
assist in the robbery" if the Jury believe from the evidence
she was committed

4th If the Jury believe from the evidence that the
man called Barber Bell as the Bar Keeper of Washburn
expended the money charged to have been taken believing
that he was bound to do so for the benefit of his employees
on a bona fide claim in their behalf, and also that
the money was for them, and not for his own benefit
or to be appropriated to his own use then he has
committed no robbery and the law is for him which
the Court refused to give but added after the words

* which instructs the Court refused to give, as prayed for but
amended and granted them as below appears, these instructions being
amended or qualified by the Court the Court for the defendant expected to
the amendment or qualification, & about the authority of the Court in the premises

was found" on the 4th time of the instruction the Court
said had a right" and then gave it with the following
addition or amendment to wit: if the Jury believe from
the evidence that a person of ordinary capacity, could
have so believed *

The cause was then submitted to the Jury which after
deliberation returned a verdict as follows that Samuel Case
is not guilty, that in the Case of Catharine Case they
could not agree that in the Case of Barber Pele they
had found him guilty in manner & form as charged
in the indictment that the amount of the Robbery
was Two Dollars and fifty Cents and that his sentence
should be three years confinement in the Penitentiary
The counsel for the defendant then moved the Court
for a new trial and filed the following reasons there-
for - to wit:

1st That the verdict of the Jury was against the Law
and the evidence

2^d That the instructions given by the Court were calculated
to mislead the Jury and not in accordance with the
Law

3^d That the indictment was first made known to
the defendant in the morning of the day of trial and
without a chance for proper preparation for defence
was put upon his trial the evening of the same day
His Counsel declaring at the time the defendant
was arraigned, that he would go to trial alone

4th That for want of time and the press of business
in this Court and the ill health of his Counsel they
were unable to properly prepare his defence, in consequence
of which he lost the benefit of testimony of a witness
who was present at the time of the alleged offence

5th And also for the reason that the said defen-
dant is not guilty of the said offence

6th Because the verdict of the Jury was that the
defendant be sentenced to the penitentiary for a term of
years which is against the Statute made and
provided

Motion for a New Trial occurred to which
Counsel for defendant excepted

And the said defendant presented the Bills of
Exceptions and prayed the Court to sign and
seal the same which is done in open Court

Edw^d 3
R. S. Wilson, Recorder of the
City of Chicago

State of Illinois }
County of Cook } ss
City of Chicago } I Philip A. Storm Clerk
of the Recorder Court of the City of Chicago in the County
of Cook and State of Illinois do hereby certify that
the above and foregoing is a true and correct
recd of the proceedings in the case of the

People of the State of Illinois vs Barber Bill Impleaded
with Samuel Carr and Catharine Carr in an Indictment
for Robbery

Witness my hand and the Seal of said
Court at Chicago, this 21st day of July A.D. 1863

Philip A. May
Clerk

Barber Bill impleaded with
Saml Carr & Catharine Carr Plaintiffs in error
vs

The people of the State of Illinois

Error to the Recorders

Court of the City of Chicago

And now comes the said Barber
Bill by P. Phelps & J.E. McGinn his Counsel &
says that in the record and proceedings aforesaid &
in the rendition of the judgment aforesaid there
is manifest error to his prejudice in this
to wit that the said Recorders ^{Court} rendered judgment
and sentence against the said Plaintiff in error
when by the law of the said said Recorders
Court should have rendered judgment for the
said Plaintiff in error And for further assign-
ment of error said Plaintiff in error assigns
and sets down the following to wit

1st The Court erred in making a statement to and in the hearing of the jury of what was or was not proved & this statement was made with reference to a material point in the issue

2nd The Court erred besides in making said statement to and in the hearing of the jury of what was or was not proved - such statement being equivalent to an oral instruction which is contrary to the law made and provided

3rd The Court erred in refusing the first instruction asked by the defendants counsel & erred also in giving the qualification or addition which he did give as tending to mislead the jury as to the law of the case

4 The Court erred in refusing the second instruction asked by the defendants counsel and also in giving it with his amendments or qualifications which were calculated to mislead the jury as to the law of the case

5th 6th The Court erred in refusing to give the fourth instruction asked by the defendants Counsel

Also in qualifying said instruction such qualification being calculated to mislead the jury as to the law of the case

Also in having therein misstated the law of the case

6th 7 The Court erred in not setting aside the verdict of the jury
that the verdict was against the law and the evidence

And thus he is ready to verify - Wherefore and
for other errors appearing in the Record of the
judgment aforesaid the said Plaintiff prays that
the said judgment may be reversed and set
aside and for nought esteemed and that he
may be restored to all things he may have lost
by occasion thereof &c

Phelps & McGirr for Plaintiff

18.
Barber Bill imptd.
With Annual Letter
Huntington Course.

18
The People &c

18 P.D.

Rec'd. & ansd.

Filed July 27 1853

W. L. Lillard Clerk
By P. H. Lillard Deputy

12102

1953

Attawa Apr. 3^d/54

Dr. Sir -

Herewith I send
a list of all the cases &
names of counsel - also
copy of opinion in case
of Barber Bill -

Please send to
as soon as convenient -
Clerk ~~without delay~~,
The papers in the case
of Cowen vs. The People.
as the opinion in that
case has not been
recorded -

Respectfully yours &c.

P. R. Leland

E. Peck say }
Chicago Ill.

Barber Bill impleaded with {
Samuel Carr & Catharine Carr } Error to Recorder's
as, } Court of City of
The People of the State of Illinois } Chicago -

Opinion of the Court by Great Chief Justice.

The counsel for the prisoner had a clear right to insist before the jury, that Mrs. Carr did not go into the room where the alleged robbery was committed, until the prosecutor had laid the money on the counter - The witness Burk swore expressly that such was the fact; and she was flatly contradicted by the prosecutor. This conflict of testimony presented a question for the decision of the jury - It was for them, and not the Court, to determine which of the witnesses was to be believed - The Court erred in saying to the counsel, in the presence & hearing of the jury that there was no evidence showing that Mrs. Carr went into the room after the prosecutor had deposited the money on the counter - It was expressing an opinion as to the facts of the case, which may have influenced the action of the jury, & thereby have operated to the prejudice of the prisoner - It may have had the same effect upon the jury, as if the Court had directed them to disregard the testimony of Burk altogether - As her statements, if true, sustained the counsel's position, the jury would naturally conclude from the remark of the judge, that he regarded the witness as unworthy of credit - It is peculiarly

The province of a jury to pass upon the credibility of a witness. A court may properly correct counsel when they mistake the evidence, or assume as facts what is not proved, but there was no occasion for any such interference in this case. There was testimony tending to sustain the position taken by counsel, and it was the right of the prisoners to have it considered by the jury. The judgment is reversed, and the cause remanded.