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No. _____

Supreme Court of Illinois

Jupitz, alais Upetz.

vs.

People.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

People's Causes.

No. 7

J. W. Middleton & Co., Stationers, 196 Lake St.

Apr. 7. 1864

Ref

1864

1863

People's

People

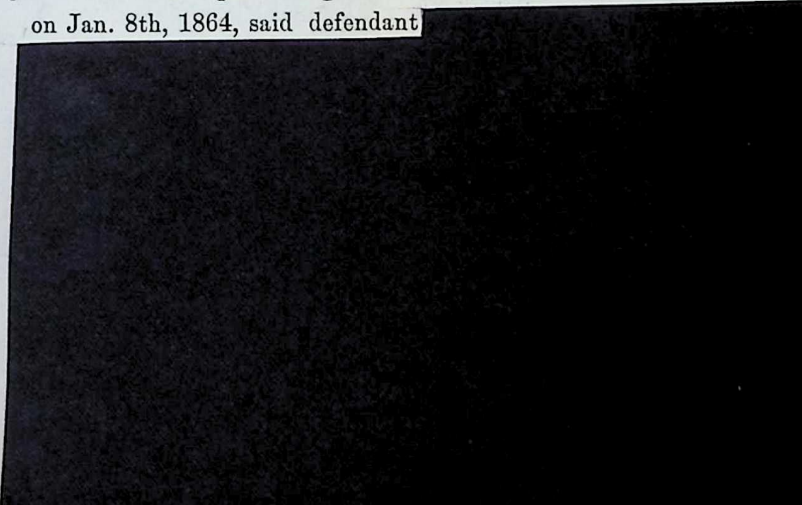
1864

Supreme Court of Illinois.

APRIL TERM, A. D. 1864.

CHARLES JUPITZ, <i>alias</i> CHARLES UPETZ,	} <i>Error to Re- corders's Court of Chicago.</i>
<i>Plaintiff in Error,</i>	
vs.	
THE PEOPLE OF THE STATE OF ILLINOIS,	
<i>Defendants in Error.</i>	

ABSTRACT OF RECORD.

- 1 *Placita.* Feb. 1, 1864. Return of *venire* of Grand Jury.
- 3 Grand Jury duly sworn and charged.
- 5 Indictment presenting Charles Jupitz, alias Charles Upetz, that
on Jan. 8th, 1864, said defendant
- 

21 The People then called as a witness, CHARLES DANA, who being duly sworn, testified:

I have seen the defendant. I was at his place on State Street. I saw him buy some brass of Joe Williams, who is now in the Reform School. Three or four of the brasses were like the one here. They were like these, only they had small shoulders. *The others were different.* A woman weighed them. Defendant was within six feet, looking on, and he paid for them. Some of them had shoulders on. He paid Joe \$3.40. I saw this book. (Book shown to witness.)

And on cross-examination the witness testified:

Joe Williams, John Kervin and I, went to his place together. He keeps a Junk Shop. Joe had the brasses in a bag. When we went in, Joe asked him if he would buy brass of him. He said, yes. The defendant and his wife weighed, and he paid for it. He then threw it in an old barrel that was standing there. *He did not examine it.* He saw them. The defendant is a German, and speaks but little English. We did *not tell* defendant *that the property was stolen.* I did not *know it myself.* Nothing was said, except Joe asked him if he would buy it, and he said, yes. I saw this book, (defendant's book shown the witness.) The time Joe sold the brass, was about the time of the charge in the book. The brass was \$3.00. *There was* 23 *a piece of copper that brought \$0.40.* I was never there before and have not been there since. He paid \$3.00 for the couplings, and 40 cents for some copper.

The people then called, as witness, JOHN KERVIN, who, being duly sworn, testified:

I have seen the defendant. I saw Joe Williams going over to sell some brass. I think they were like that. They were all just like that (referring to the one in court) except one which was rough. When we went in, Joe said he had brass to sell, and asked the man if he would buy it. He said yes. Joe turned it out on the scale.

He paid \$3.00 for it. Then there was a piece of copper for which he paid \$0.40. He did not ask where he got them.

And on cross-examination the witness testified:

The brass was thrown on the scale by Joe. *It was not taken up and examined* by the defendant. He stood with his arm on the scales. *Joe did not tell him where he got (it.)* He said nothing about it. Joe had the brass when I met him. I knew it was stolen. *Joe did not tell him it was stolen—neither did I.* I had one-third of the money. When we went away the man said he would buy anything of us. He keeps a junk shop, and buys such things—rags, old iron and brass.

The people then called as a witness OFFICER ROGERS, who being sworn, testified:

I went to this man's place to arrest him. I found no brass there. I asked him if he had any, and he said no. I looked over and saw
25 nothing. *He was very much scared.* I arrested him on the 11th of December. I found that book there, and brought it with me. (The witness is here shown a book belonging to defendant, and hereinafter offered and put in evidence. The book contained an entry of the purchase of the brass.)

And being cross-examined, the witness testified:

When I went to the place of the defendant I had a warrant for his arrest for larceny. I stated to him that the M. C. R. R. Co. had lost some brasses, and asked him if he had any. He said no. I then told him I had a warrant for him, and to go along with me. He did so, and we went to the armory, and he had an examination. I took that book. *It was lying on the table* in the junk shop. *He told me to look around for the brasses. I saw none there.* His place is on State street, in the city of Chicago. It is a good sized room. *He said I might take the book, and I did so.* He said that the man

that was with me should not have it.* I did not tell him what railroad company had lost brasses. He keeps a junk-shop.

The People then recalled CHARLES DANA, who testified:

I have seen this man. I went to his shop on State Street with Joe. *I did not see him take up any of the brass.* Joe asked him if he would buy any more of him. He said yes. When he got more to bring it to him and he would buy it. I did not know that the brass
27 was stolen. *We did not tell the defendant that it was stolen.*

The People then called, as a witness, JOSEPH WILLIAMS, who, being duly sworn, testified:

I sold the defendant some brass. I do not know when. John Kevin and Charles Dana were with me. I got the brass at the Michigan Central Round-House. *I stole it there.* I sold him some old iron and brass once before. The brass I sold him when Dana was with me, *was some like that* (the coupling shown witness), and some had the corners come out. I had a piece of copper pipe. He didn't ask me where I got it. I asked him if he would buy any more of me, and he said yes, he would buy anything I brought him. I am twelve years old. He told me if I got any more to bring it to him.

And on cross examination he testified:

The boxes *he did not look at* to see whether the creases were good or not. I got them out of a little shed in the Michigan Central Round-House. No one was there. They had threads inside. When I went out of the defendant's store I asked him if he would buy anything I brought him, and he said yes. I never went there after that time. There was a woman and a man there. He purchased it in the front room. I went there because it was a junk shop. I have never been to any other one but one. The man *did not look at the inside of them.* I poured them on the scales *and the woman weighed them.* He was standing near the scales and paid me for them.

29 The plaintiffs here offered in evidence, the book of defendant

identified by officer Rogers, which was received in evidence without objection, and such parts thereof as are material are as follows:

This book is a general account book, containing entries of copper, brass, iron, rags, bottles, &c., (and all articles dealt in in junk shops) entered in consecutive items from February, 1863, to December 11th, 1863, and among other entries on the 2d day of December, 1863, appears this item, "Brass, Copper, \$3.40."

And the defendant, on his part, then called the following witnesses, who, being duly sworn, testified as follows:

W. W. KLINGER, who, being duly sworn, testified:

I know the defendant. *Have known him for eight or nine years.* He has been in my employment. I know his reputation for honesty. *It is good. He is an honest, good man.* I have never heard anything against him.

The defendant further called as a witness P. SCHICH, who, being duly sworn, testified:

I know the defendant. *Have known him for twenty-five years.* *Since he was a boy.* I know his reputation for honesty. *It is good.*

Know his reputation for honesty. It is good. I never heard anything against him till this suit.

The defendant further called, as a witness, CHARLES LODING, who, being duly sworn, testified:

I have known the defendant four or five years. I know his reputation among his acquaintances for honesty. It is good. I have never heard anything against him but this suit.

The defendant further called, as a witness, OTTO A. SEEVERS, who, being duly sworn, testified:

I know the defendant. Have known him *six or seven years*. He is a neighbor of mine on State Street. I know his reputation for honesty. It is good. *He is a good man.*

The defendant further called, as a witness, FREDERICK BUCKSHIES, who, being duly sworn, testified:

I have known the defendant *eight or nine years*. I know his
33 reputation among his employers for honesty. It is good. *He is an honest man.*



[REDACTED]

The defendant then rested his case.

33 This was all the evidence in the case.

The counsel for the people of the State of Illinois asked, on their behalf, the Court to give to the jury the following instructions, namely:

[REDACTED]

their minds as to defendant's guilt
mitted to them:"

Which said instruction the Court qualified by adding to the end thereof, the words, "In all these matters they will be governed

And on behalf of the defendant the following instructions were thereupon asked and given by the Court to the jury, namely:

37 1. "The jury are instructed by the Court, that before the defendant can be found guilty, under the statute of receiving stolen goods, they must find from the evidence, first, that he purchased the property that was stolen. Second, that he knew that the property had been stolen at the time that he purchased it."

2. "The jury are further instructed that the statute must be construed strictly, and that the defendant is entitled to all reasonable doubts that may be in their minds as to his guilt."

And the defendant, by his counsel, further asked the Court to give to the jury the following instruction, on his behalf, namely:

4. "The jury are also instructed that statements made by the Rail

Road Company, or its agents, to the officer, are not evidence against the defendant, and should not be received as evidence against them." Which said instruction the Court gave accordingly.

The defendant further asked the Court to give to the jury the following instruction, namely:

5. "The jury are also instructed by the Court, that although they find, from the evidence, that the defendant purchased of one Joe Williams certain brass boxes, and that these boxes had been, by said Joe Williams, stolen from the Michigan Central Rail Road Company, yet they will find for the defendant, unless they further find, that at the time that he purchased said boxes of said Joe Williams, he, the defendant, knew that said boxes were stolen property, and purchased them as such."

Which the Court refused to give without qualification, but qualified the same by the addition to the end thereof, the words, "and to arrive at this conclusion, the jury must take into consideration all the facts and circumstances in evidence in this cause." And as so qualified the Court gave said instructions to the jury. To which decision and ruling of the Court, in refusing to give said instruction without qualification, and in qualifying the same, the defendant, by his counsel, then and there duly excepted.

The defendant further asked the Court to give to the jury the following instruction:

6. "The Court further instructs the jury that the defendant is not in his business, as a matter of law, obliged to ask parties who offer him property, from whom or where they obtain it. That the presumption of law is that they came by it honestly; and if in the course of his business he purchased property which had been stolen, he is not liable under the statute for receiving stolen goods, unless the prosecution also prove that, at the time he made the purchase, he knew the property to be stolen property."

But the Court refused to give said instruction without qualifi-

cation, but qualified the same by adding to the end thereof, the words, "and unless from the circumstances in evidence in the case, the jury believe that he must have known that the property was stolen." And as so qualified gave said instruction to the jury. To which decisions and rulings, and each of them of the Court, in refusing to give said instruction without qualification, and in qualifying the same, the defendant, by his counsel, then and there duly excepted.

The jury thereupon found the defendant guilty, as charged in the indictment, and fixed his term of imprisonment in the State Prison for one year, and also found the value of the property stolen at thirty dollars.

And thereupon the defendant entered and filed his motion herein for a new trial, in the words and figures following, to wit:

STATE OF ILLINOIS,	} ss.	In the Recorder's Court of the City of Chicago, of the February Term, A.D. 1864.
COUNTY OF COOK,		
CITY OF CHICAGO.		

THE PEOPLE,

vs.

CHARLES JUPITZ.

Said defendant moves the Court for a new trial in the above cause, and assigns the following reasons:

1ST—The Court erred in permitting improper testimony to go to the jury.

2ND—The Court erred in refusing proper testimony offered by the defendant.

3RD—The Court erred in refusing an instruction asked by the defendant.

4TH—The Court erred in giving instructions upon the part of the people.

5TH—The Court erred in making additions to the instructions asked for by the defendant.

6TH—The verdict was contrary to the law and the evidence. There was no evidence upon which to found a conviction.

Motion overruled and exception.

45 Sentence pronounced and exception.

47 Certificate of clerk.

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ERRORS ASSIGNED.

1. That the Court erred in overruling the motion for a new trial.

2. That the verdict was against the law and the evidence, and the weight of evidence.

3. That said verdict does not authorize the sentence and judgment of said Court thereon.

4. That the Court erred in giving improper instructions to the jury on behalf of the defendants in error.

5. That the Court erred in qualifying the instructions asked on behalf of plaintiff in error, and each of them, and in refusing to give said instructions without qualification.

6. That the court erred in admitting improper testimony on behalf of defendant in error, and in overruling the objections of plaintiff in error thereto.

7. That the Court erred in refusing to admit competent testimony offered on behalf of plaintiff in error, and in sustaining the objection of defendants in error thereto.

8. That the judgment is in favor of defendants in error, and against plaintiff in error, when it should be in favor of plaintiff in error and against defendants in error.

FULLER & HAM,
AND RUNYAN,

Attorneys for Plaintiff in Error.

7-109
C. J. J. J.

13
The People

Abstract

United Nov. 7. 1864

J. J. J. J.
m

Supreme Court of Illinois

Third Grand Division

Charles J. Fitz

April 1. 1864

alias Charles J. Fitz

Ref. in error

The People of the State

of Illinois

Defts. in error

State of Illinois

Cook County

Personally comes John Fitch

being duly sworn on oath declares &
says that he is worth two thousand
dollars over & above all debts and
liabilities whatsoever - That he resides
in the County of Cook aforesaid and
owns real estate therein of the value
of two thousand dollars;

Subscribed and sworn

to before me this 21st day of

February A.D. 1864

John Fitch

Notary Public



Supreme Court
Charles J. Inpitz
alias
Charles J. Inpitz

✓
The People of the
State of Illinois

Applicant of record

Filed March 7, 1864
L. L. L. L.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.
CITY OF CHICAGO. }

PLEAS

BEFORE THE

HONORABLE EVERT VAN BUREN,

Recorder of the City of Chicago, and Presiding Judge of the Recorder's Court of said City, at a term thereof begun and held at the Court House in the City of Chicago, in the County and State aforesaid, on the first Monday, (being the *First* day) of *February* in the year of our Lord one thousand eight hundred and *sixty four* and of the Independence of the said United States the eighty *eighth*

Present, Honorable EVERT VAN BUREN, Recorder of the City of Chicago.

Joseph K. Noel States Attorney.

J. J. Hammond Sheriff of Cook County.

Attest, DANIEL O'HARA, Clerk of said Court.

Be it remembered, to wit, on the *First* day of *February* in the year last aforesaid, it being the Term of Court aforesaid, the following among other proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following, to wit;

The Sheriff of Cook County returned into Court the *Venue Facias*, heretofore issued, by which it appears to the Court that the following named persons have been duly summoned to appear this day and serve as Grand Jurors at the present term of this Court; to wit;

C. J. Nelson. James Clelland. John Ryan.
J. J. Maurer. C. R. Jordan. O. Wheaton.

3.

M. Maquire. John Webb. C. W. Fuller.
 J. M. Harris. R. H. Sinclair. G. Fitch.
 J. B. Packard. B. F. Crow. H. Giese.
 L. Kubert. C. Scenlan. A. J. Hayward.
 C. N. Edwards. J. D. Weber. Thomas Nelson.
 Daniel Mullins. Wm Woods.

who upon being called answer to their respective names
 and gave their personal attendance as a Grand Jury
 in and for the City of Chicago at the present term
 of this Court, and C. B. Nelson one of the said
 Grand Jurors being appointed Foreman of said Grand
 Jury, they were duly sworn and charged by the Court
 and thereupon retire to consider of their presentments.

The Grand jury came into open Court and made, among others, the following presentment, endorsed 'True Bill', which said True Bill is in the words and figures following, to wit;

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

Of the February term of the
 " Records Court of the City of Chicago, in said State
 " and County, in the year of our Lord one thousand
 " eight hundred and sixty four.

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 Charles Jupitz alias Charles Wpitz, late of said City, on the eight day of January in the year of our Lord one thousand eight hundred and sixty four, in said City of Chicago, in the County and State aforesaid, twelve trap couplings of the value of three dollars each, the personal goods and property of The Michigan Central Rail Road Company for the gain of him the said Charles Jupitz alias Charles Wpitz unlawfully and feloniously did have and receive the said personal goods and property before then having been feloniously stolen, taken and carried away, by the said Charles Jupitz alias

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"Charles Wepetz then and there well knowing the said
"goods and chattels to have been feloniously stolen, taken
"and carried away, contrary to the statute, and against
"the peace and dignity of the same People of the State
"of Illinois

Joseph Knox, State Attorney.

And the foregoing True Bill has the following endorse-
ments, to wit;

"I. G. N. 4129.

"Records Court of the City of Chicago.

"February Term. 1864.

"The People of the State of Illinois

"Charles Wepetz alias Charles Jupitz
"Indictment for receiving stolen goods.

"A. True Bill, Claudius B. Nelson, Foreman of the
"Grand Jury

"Witnesses; off. Rogers. Charles Dana. J. Williams.

"John Kirwin, Isaac Perry. John Spinder.

"Filed the Ninth day of February A. D. 1864.

"Daniel O'Hara, Clerk.

And afterwards, to wit; on the same day and year last aforesaid, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following, to wit;

By
The People of the
State of Illinois

No. 4139.

Indictment for Receiving stolen goods.
Charles Jopitz, alias
Charles Upetz.

By
This day come the said People by Joseph Knox, State attorney, and the said defendant as well in his own proper person as by his Counsel O. F. Rungton, Esq. also come, and he having been furnished with a copy of the Indictment in the cause and with the names of the Witnesses and Jurors, and he being now here duly arraigned and forthwith demanded of and concerning the crime alleged against him in said Indictment, how he will acquit himself thereof, for a Plea in that behalf says, that he is not guilty in manner and form as charged therein, and of this he puts himself upon the Country and the said People do the like.

Thereupon the Court orders the said defendant to be remanded into the custody of the Sheriff of Cook County.

And afterwards, to wit; on the Tenth day of February A. D. 1864. it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following, to wit;

The People of the
State of Illinois

No. 4129.

vs Indictment for Receiving stolen goods.
Charles Jupitz, alias
Charles Wepitz.

This day again come the said People by Joseph Knop, State Attorney, and the said defendant as well in his own proper person as by his Counsel C. F. Runyon Esq. also come, and now issue being joined, it is ordered by the Court that a jury come; thereupon come a jury of good and lawful men, to wit; Robert Brittain, Samuel O. Barnes. Wm. Curran. Charles Higby. Michael Cassidy. Smith Mc Cleary. John Gottloff. William H. Popper. Ira D. Brightman. John Branton. George Shook. J. W. Connett; who were duly empanelled and sworn, and they hearing the testimony of Witnesses (arguments being waived) and instructions of the Court, retire in charge of a sworn officer, to consider of their Verdict, and afterwards return into Court again, and for a Verdict say; We the

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Jury find the defendant guilty as charged in the Indictment, and fix the term of imprisonment in the State Prison for one year, we also fix the value of the property stolen at Thirty Dollars.

Whereupon the Court orders the said defendant to be remanded into the custody of the Sheriff.

And now come the said defendant by his Counsel and moves the Court for a new trial in this cause.

And afterwards to wit; on the Tenth day of February in the year last aforesaid it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following, to wit;

The People of the
State of Illinois

4129.

Indictment for receiving stolen goods.
Charles J. Fitzgibbons
Charles W. Fitzgibbons

This day come the said People by Joseph K. State Attorney and the said defendant as well in his own proper person as by his Counsel Rungom

and Fuller also come, and the Court having considered the motion for a new trial made in this cause by the said defendant, and he having heard Counsel as well in support of said motion as in opposition thereto, and being fully advised in the premises doth overrule said motion and orders that said motion for a new trial be and the same hereby is overruled; to which ruling of the Court in overruling said motion for a new trial, the said defendant by his Counsel then and there excepts.

And after wards, to wit on the twenty third day of February in the year last aforesaid, it being the term of Court aforesaid, the following among the proceedings were had and entered of Record in said Court, which proceedings are in the words and figures following to wit;

The People of the State
of Illinois

N^o 4129.

vs Indictment for Receiving stolen goods.

Charles Jupitz alias Charles
Upetz.

This day come the said People by Joseph
Knob. State attorney and the said defendant as well in
his own proper person as by his Counsel Runyon and Fuller
also come, and now neither the said defendant nor his
Counsel for him saying anything further, why the judg-
ment of the Court should not now be pronounced against
him on the Verdict of guilty rendered in this cause,

Therefore, it is ordered and
adjudged by the Court, that the said defendant Charles
Jupitz alias Charles Upetz be taken from the bar of the
Court to the common jail of Cook County, from whence
he came, and from thence by the Sheriff of Cook County,
within Ten days from and after this date, to the Peniten-
tiary of this State at Joliet, and be delivered to the
Warden or Keeper of said Penitentiary, and the said War-
den or Keeper is hereby required and commanded to take
the body of the said defendant Charles Jupitz alias Charles
Upetz and confine him in said Penitentiary in a safe
and secure custody, for and during the term of One year
from and after the delivery hereof, one day of said term
in solitary confinement and the residue of said term
at hard labor, and that he be thereafter discharged.

It is further ordered by the Court that

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the said defendant pay all the costs of these proceedings and that execution issue therefor.

And afterwards to wit on the twenty fourth day of February in the year last aforesaid, the said defendant by his Counsel filed in the Office of the Clerk of said Recorders Court his Bill of exceptions, which said Bill of exceptions is in the words and figures following to wit;

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

Recorders Court of the City
of Chicago February Term
A. D. 1864.

The People of the State of Illinois } Indictment for
Charles Jopitz alias Charles Whetz } receiving stolen
goods.

Be it remembered, that on this 10th day of February A. D. 1864, the same being one of the days of the February Term A. D. 1864 of said Court, this cause coming on to be tried upon the Indictment herein and the issue joined thereon and a jury having been impanelled to try the issues joined as aforesaid, on the part and behalf of the People of the State of Illinois, Plaintiff herein as

aforsaid, was called as a witness.

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John Pfender, who being duly sworn testified as follows;
I work for the Michigan Central Rail Road Company
I have worked for them the last twelve years, they had
about four months ago some trap couplings in a little shed
or shop, had about ten or twelve hanging up on a rope, I put
from Michigan Central Round House in this City, there were 10 to 12 taken, worth from \$2.00 to \$3.00 each
them there myself - they were like the one here, they were taken,
(a trap coupling was here handed the witness for the purpose
of identifying them, to which defendant by his Counsel then
and there objected on the ground that Plaintiff should show
the property stolen and not prove the property or its value
by comparison, which said objection was then and there over-
ruled by the Court - to which decision and ruling of the
Court the said defendant by his Counsel then and there
duly excepted.)

The Witness then proceeded;

There was a hole on the back side of the shanty out of
which they must have been taken.

And on cross examination, the witness testified

I do not know that the traps were stolen - I had not
seen them for four or five months before they were missed
by me - the foreman of the shop had the key to the place
where they were kept - other men went in there - I do not
know whether they were taken out of there by some of the
hands or not - I am the only one that uses them - they
belong about the engine house - I had charge of them - no one
had a right to take them without my consent - I did not
give any one permission to take them - the couplings were new

and perfect -

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The People then called as a witness.

Charles Daner who being duly sworn testified:

I have seen the defendant - I was at his place on State Street - I saw him buy some brass of Joe Williams who is now in the Reform School - three or four of the brases were like the one here, the others were different, - they were like those, only they had small ~~and~~ shoulders a woman weighed them - defendant was within six feet looking on and he paid for them - some of them had shoulders on - he paid Joe \$3.40 - I saw this book (book shown the Witness.)

and on

Cross examination the witness testified.

Joe Williams, John Kervin and I went to his place together - he keeps a junk shop - Joe had the brases in a bag - when we went in Joe asked him if he would buy brass of him, he said yes - and the defendant and his wife weighed and he paid for it - he then threw it in an old barrel that was standing there - he did not examine it - he saw them - the defendant is a german and speaks but little english - we did not tell defendant that the property was stolen - I did not know it myself - nothing was said except Joe asked him if he would buy it and he said yes - I saw this book (defendant's book shown the Witness) the time Joe sold the brass was about the time of the charge in the book - the brass was \$3⁰⁰ - there was a piece of copper that

brought \$0.40 - I was never there before and have not been there since - he paid \$3⁰⁰ for the couplings and 40 cents for some copper.

The People then called as a witness

John Kervin, who being sworn testified,

I have seen the defendant - I saw Joe Williams going down to sell some brass, I think they were like that - they were all just like that (referring to the one in Court) except one which was rough - when we went in Joe said he had brass to sell and asked the man if he would buy it - he said yes - Joe turned it out on the scale - he paid \$3. for it - then there was a piece of copper for which he paid \$0.40 - he did not ask where he got them.

And on

Cross examination, the witness testified

The brass was thrown on the scale by Joe - it was not taken up and examined by the defendant - he stood with his arm on the scales - Joe did not tell him where he got - he said nothing about it - Joe had the brass when I met him - I knew it was stolen - Joe did not tell him it was stolen - neither did I - I had one third of the money when we went away the man said, he would buy anything of us - he keeps a junk shop and buys such things rags, old iron and brass -

The People then called as a Witness

Officer Rogers, who testified, after being duly sworn

I went to this man's place to arrest him - I found no brasses there - I asked him if he had any and he said no

25

I looked over and saw nothing - he was very much scared
I arrested him on the 11th of December - I found that
book there and brought it with me - (the witness is here
shown a book belonging to defendant herein after offered
and put in evidence.) the book contained an entry of
the purchase of the braf

and on

Cross examination the witness testified.

When I went to the place of the defendant I had a war-
rant for his arrest for Larceny - I stated to him that the
M. C. R. R. Co. had lost some brafs - and asked him
if he had any, he said no - I then told him, I had a
warrant for him and to go along with me - he did so and
we went to the armory and he had an examination - I
took that book it was lying on the table in the junk shop
he told me to look around for the brafs - I saw none there
his place is on State Street ^{in the City of Chicago.} it is a good sized room - he
said I might take the book - and I did so - he said
the man that was with me should not have it - I did
not tell him what Rail Road Co. had lost ~~the~~ brafs
he keeps a junk shop -

The People then recalled

Charles Dana, who testified;

I have seen this man - I went to his shop on State Street
with Joe - I did not see him take up any of the braf,
Joe asked him if he would buy any more of him - he said
yes - when he got more to bring it to him and he would
buy it - I did not know that the braf was stolen - we

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did not tell the defendant that it was stolen -

The People then called as a Witness;

Joseph Williams, who being sworn also testified,

I sold the defendant some brass - I do not know when John Kervin and Charles Dana were with me - I got the brass of the Michigan Central Round House, I stole it there, I sold him some old iron and brass ^{once} ~~and~~ before. The brass I sold him when Dana was with me was some like that (the coupling shown witness) and some had the corners come out - I had a piece of copper pipe - he did not ask me where I got it - I asked him if he would buy any more of me and he said yes, he would buy anything I brought him - I am twelve years old, he told me if I got any more to bring it to him and on

Cross examination he testified

The boxes he did not look at to see whether the creases were good or not - I got them out of a little shed in the Michigan Central Round house, no one was there - they had threads inside - when I went out of the defendant's store I asked him if he would buy anything I brought him and he said yes - I never went there after that time - there was a woman and a man there - he purchased it in the front room - I went there because it was a junk shop - I have never been to any other one but one - the men did not look at the inside of them - I poured them on the scales - and the woman weighed them - he was standing near the scales and paid me for them.

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The Plaintiff here offered in evidence the book of defendant identified by Officer Rogers which was received in evidence without objection and such parts thereof as are material are as follows: this book is a general account book containing entries of copper, brass, iron, rags, bottles &c. &c. (and all articles dealt in in junk shops) entered in consecutive items from February 1863 to Dec. 11 1863 and among other entries on the 2nd day of December 1863 appears this item

" Brass - copper

\$ 3. 40 "

And the defendant on his part then called the following witnesses who being duly sworn testified as follows;

W. Klinger who being duly sworn testified;

I know the defendant - have known him for eight or nine years - he has been in my employment - I know his reputation for honesty - it is good, - he is an honest, good man - I have never heard anything against him.

The Defendant further called as a Witness;

P. Schick who being duly sworn testified;

I know the defendant, have known him for twenty five years since he was a boy - I know his reputation for honesty - it is good - always has been good - he is an honest man - he has been in my employ and handled my money - was always honest -

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The Defendant further called as a witness;
John Mayer, who being duly sworn, testified;

I know the defendant, he has been in my employ, he was in my employ about a year - then again about another year I never heard anything against him till this - I know his reputation for honesty, it is good

The Defendant then called as a witness;
Charles Kruger, who being duly sworn testified;

I know the defendant - have known him four or five years know his reputation for honesty - it is good - I never heard anything against him until this suit.

The Defendant further called as a Witness;
Charles Lodig who being duly sworn, testified;

I have known the defendant four or five years - I know his reputation among his acquaintances for honesty, it is good - I have never heard anything against him, but this suit

The Defendant further called as a Witness;
Otto A. Sievers, who being duly sworn, testified;

I know the defendant - have known him six or seven years he is a neighbour of mine on State Street - I know his reputation for honesty - it is good - he is a good man.

The Defendant further called as a Witness
Frederick Buchopics, who being duly sworn testified;

I have known the defendant eight or nine years - I know

his reputation among his employers for honesty, it is good - he is an honest man

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The Defendant then called Mr. Daily and Christopher Finnegan who were duly sworn as Witnesses in said cause and by them and each of the said Witnesses the defendant offered to prove that they were Machinists and trap finishers of large experience and that from common observation and without close inspection it could not be told whether traps such as were shown in the case were perfect or imperfect whether they were of any use for the purpose for which they were intended or were merely good as old traps to remould. To the introduction of which evidence and each and every part thereof, the People aforesaid by their Counsel then and there objected and the Court sustained the objection and refused to permit the proof to be made and the testimony to be given to the jury; to which ruling and decision of the Court in refusing to permit said proof to be made and said testimony to be given to the jury, the defendant by his Counsel then and there duly excepted.

The Defendant then rested his case.

This was all the evidence in the case, and argument being waived, the Counsel for the People of the State of Illinois thereupon asked on behalf of the People aforesaid, the Court, to give ^{to the jury} the following instructions, namely;

35 Circumstantial evidence is as legal and competent evidence to prove a crime as positive or direct evidence;

which said instruction the Court qualified by adding to the end thereof, the words;

"if it is satisfactory to the jury."

and as so qualified gave the said instruction to the jury, to the giving of which instruction, as so qualified, to the jury, the defendant by his Counsel then and there accepted.

The People of the State of Illinois aforesaid by their Counsel also asked the Court to give to the jury the following instruction, namely;

2. The jury should consider all the proven circumstances of the case and all the evidence in relation to the denial of the possession by defendant and of his manner when the charge was made, the real value of the property and the price actually paid for it, the failure to inquire of the seller where he got it, the character of the article sold, and all other proven circumstances in making up their mind as to Defendant's guilt or innocence in the case now submitted to them.

which said instruction the Court qualified by adding to the end thereof the words

"in all these matters they will be governed by the evidence in the case" and as qualified gave said instruction to the jury. To the giving of which said instruction the defendant by his Counsel then and there duly accepted.

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And on behalf of the defendant the following instructions were thereupon asked and given by the Court to the jury, namely;

1. The jury are instructed by the Court, that before the defendant can be found guilty under the Statute of receiving stolen goods, they must find from the evidence, first, that he purchased the property that was stolen - second, that he knew that the property had been stolen at the time that he purchased it,
2. The jury are further instructed that the Statute must be construed strictly, and that the defendant is entitled to the benefit of all reasonable doubts that may be in their minds as to his guilt.

And the said defendant by his Counsel asked the Court to give to the jury the following instruction, namely:

3. The jury are further instructed that the evidence of the good character for honesty of the defendant should have great weight in determining as to his guilt or innocence - and if they find from the evidence that the defendant has heretofore and now, bears a good character for honesty, it should have great weight in his favor.

but the Court refused to give the instruction as prayed and qualified the same by the addition of the following words at the close of said instruction, namely

'if the jury believe there is any doubt of his guilt.'

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and as qualified the Court gave said instruction, to which decisions and rulings and each of them of the Court, in refusing to give said instruction without qualification, and in qualifying the same and giving the same so qualified, the defendant by his Counsel then and there excepts.

And the defendant by his Counsel further asked the Court to give to the jury the following instruction on his behalf, namely;

4 The jury are also instructed that statements made by the Rail Road Company or its agents to the officer are not evidence against the defendant and should not be received by them, as against them.

which said instruction the Court gave accordingly.

The defendant further asked the Court to give to the jury the following instruction, namely;

5. The jury are also instructed by the Court that although they find from the evidence that the defendant purchased of one Joe Williams certain trap boxes, and that these boxes had been by said Joe Williams stolen from the Michigan Central Rail Road Company, yet they will find for the defendant, unless they further find, that at the time, that he purchased said trap boxes of said Joe Williams, he

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the defendant knew that said boxes were stolen property, and purchased them as such.

which the Court refused to give in that qualification, but qualified the same by the addition to the end thereof, the words;

"and to arrive at this conclusion the jury must take into consideration all the facts and circumstances in evidence in this cause."

and as so qualified the Court gave said instruction to the jury - to which decision and ruling of the Court in refusing to give said instruction without qualification and in qualifying the same, the defendant by his Counsel then and there duly excepted.

The Defendant further asked the Court to give to the jury the following instruction

6. The Court further instructs the jury that the defendant is not in his business, as a matter of law, obliged to ask parties who offer him property, from whom or where they obtain it, that the presumption of law is that they come by it honestly and if in the course of his business he purchases property, which has been stolen, he is not liable under the Statute for receiving stolen goods, unless the prosecution also prove that at the time he made the purchase, he knew the property to be stolen property.

but the Court refused to give said instruction without qualification and qualified the same by adding to the end thereof

the words;

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"and unless from the circumstance in evidence in the case the jury believe that he must have known that the property was stolen."

and as so qualified gave said instruction to the jury - to which decisions and rulings and each of them of the Court in refusing to give said instruction without qualification and in qualifying the same the defendant by his Counsel then and there duly excepted.

The Jury thereupon found the defendant guilty as charged in the Indictment, and fix his term of imprisonment in the State Prison for one year, and also find the value of the property stolen at Thirty Dollars.

And thereupon the defendant entered and filed his motion herein for a new trial in the words and figures following, to wit;

State of Illinois	}	ss	In the Recorder Court of the
County of Cook			
City of Chicago			
			City of Chicago of the February
			Term A. D. 1864.

The People

vs

Charles Juppity.

Said defendant moves the Court for a new trial in the above cause and assigns the following reasons
1st The Court erred in permitting improper testimony to go

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to the jury,

2nd) The Court erred in refusing proper testimony offered by the defendant,

3^d) The Court erred in refusing an instruction asked by the defendant;

4th) The Court erred in giving improper instructions upon the part of the People.

5th) The Court erred in making additions to the instructions asked for by the defendant.

6th) The Verdict was contrary to the law and the evidence there was no evidence upon which to find a conviction.

C. F. Runyon
Def's Atty.

and afterwards argument of Counsel having been heard and the Court being now fully advised in the premises overruled said motion for a new trial and thereupon gave judgment on the Verdict herein by sentencing the said defendant to one year confinement in the State Prison according to the Verdict aforesaid. To which decisions and rulings of the Court and each of them, in overruling said motion and in giving judgment on the Verdict and sentencing the defendant as aforesaid, the said defendant by his Counsel then and there excepts.

And in as much as the matter and things aforesaid do not otherwise appear, the defendant prays that this his bill of exception may be signed and

sealed and made a part of the record of this cause
which is done this 23^d day February A.D. 1864.

C. Van Buren
Recorder of the City of Chicago.

47 I certify that the foregoing record contains
as I believe a full and true history of the
proceedings on the trial of the Indictment
herein before mentioned against Charles
Juspey alias Charles W. W. March
5-1864

E. W. Groves
Recorder of the City of
Chicago

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.
CITY OF CHICAGO. }

I, DANIEL O'HARA, Clerk of the Recorder's Court of the City of Chicago, in the
County and State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and
complete ~~copy of transcript of all the papers on file in my office and of all orders~~
~~and judgment entered of Record~~ in a certain cause ~~heretofore~~ pending in said Court,
on the Criminal side thereof, wherein The People of the State of
Illinois were Plaintiff and Charles Juspey and Charles
W. W. March Defendant.

In Witness Whereof, I have hereunto set my hand, and affixed
the Seal of said Court, at Chicago, this twenty fifth
day of February A.D. 1864.

Daniel O'Hara Clerk.



In Supreme Court of Illinois

This Grand Division

Charles J. Pufitz
alias

April 7, 1864

Charles W. Pufitz

Plaintiff in Error

Error to the

Recorder, Court of
the City of Chicago

The People of the State of
Illinois
Defendants in Error

Afterward, to wit on the first Tuesday after the third Monday
in April, A.D., 1864, at their same term, before the judges of the
Supreme Court of the State of Illinois, comes the said Charles
J. Pufitz alias Charles W. Pufitz by E. F. Kuyner & Heller & Kamm, his
attys. and says that in the record & proceedings aforesaid and
also in rendering the judgment aforesaid, there is manifest
error in this, to wit: That the Court erred in overruling the motion
for new trial made therein by said Plaintiff in Error; That the verdict
in said cause is against the law & the evidence and the weight
of evidence; That said verdict does not justify the sentence
& judgment of said Court thereon; That if, nowhere appears
in evidence that the crime for which said Charles J. Pufitz alias Charles W. Pufitz
is indicted, was committed within the jurisdiction of the Court
or where it was committed; That the Court erred in
giving ^{to the jury} instructions in behalf of the People of the
State of Illinois; That the Court erred in making the
qualifications, which the Court did make, with the instruction
of Defendant below, Plaintiff in Error, & in refusing to give said
instructions & each of them, without qualification; That the
Court erred in admitting, in proper testimony, on behalf
of Plaintiff below, Defendant in Error; That the Court erred
in refusing to admit competent testimony, offered on
behalf of Defendant below, Plaintiff in Error; That the judgment
aforesaid in favor aforesaid given is in favor of the People of the State
of Illinois and against said Charles J. Pufitz alias Charles W. Pufitz, contrary
to the law of the land & said judgment should have been in favor
of said Charles J. Pufitz & against the People aforesaid - And the
said Charles J. Pufitz alias Charles W. Pufitz says that the judgment
aforesaid for the errors aforesaid & other errors in the record
& proceedings aforesaid may be reversed, annulled and altogether
be set aside & that he may be restored to all things which he
has lost by reason of said judgment &c.

Kuyner & Heller & Kamm
Attys. for Pufitz in Error

Record & Pufitz
in Error

The People of
the State of
Illinois

Supreme
Charles J.
alias
Charles
Plaintiff
in Error

Chicago March 5. 1864.

Upon inspection of the within record, and the assignment
of error therein assigned, I am of opinion that there is
no material error for allowing a writ of error; and therefore
do order that a writ of error issue in due form, and such
writ of error is made a supersederas of all further proceedings
in the case. And I am further of the opinion that
the prisoner Charles Lupitz alias Charles Wpitz ought
to be bailed until the determination of said writ of error
and I do therefore order that said prisoner be discharged
from custody, upon his entering into a recognizance to
the people of the State of Illinois, before the Sheriff of Cook
County in the penal sum of One thousand dollars with
John Rich as surety, said recognizance to be conditioned
that said Charles Lupitz alias Charles Wpitz will and
shall appear at the Records Court of the City of
Chicago at the next term thereof to be holden in
said City, and at each subsequent term of said
court on the first days of said terms respectively until
the determination of said writ of error; and also
that he the said Charles Lupitz alias Charles
Wpitz will be present and submit to such order
as the Supreme Court of the State of Illinois may make
in the premises, and will not at any of the terms
of said court in which he shall be bound to appear
by said recognizance, depart the court without
leave,

L. Beckwith

Associate Justice of the Supreme Court

Chas J. F. J. J.
~~Chas J. F. J. J.~~

The People
Record &
Ass't of Enns

Filed March 2nd 1864
J. L. L. and
C. L. L.

Supreme Court of the State of Illinois
April Term 1864

Charles Dupont }
vs }
The People &c. }

Points & Authorities for Defts in
Error

The record states that a brass coupling was here ~~produced~~ handed the witness for the purpose of identifying them - to which the defendant then & there objected on the ground that plaintiff should show the property stolen & not prove the property or its value by comparison.

The couplings were not produced for the purpose supposed, offered or admitted in evidence, or referred to by the witness even, but were handed to him that he might determine whether they were the identical articles stolen.

The rule requiring the production of original writings is not applicable

to cases like this; if ^{it} were, it would
exclude all ^{oral} testimony descriptive
of property stolen & require the produc-
tion ^{in court} of a horse or any ponderous
property stolen, ~~in order~~ ^{in order} to procure
a conviction of the thief

But secondary evidence was
admissible in this case under
the rules regarding written
~~evidence~~ instruments

Where the defendant is in the
possession of an ~~instrument~~ instrument
& refuses to deliver it to the officers
the prosecutor may introduce
oral evidence of its contents

Whart. Crim. § 657-311

The brass was never in the
possession of the officers. The
officers that arrested the defendant
found none & the defendant
denied that he had any.

The denial was equivalent to
a refusal to deliver

The testimony of Daily & Hinegan was

properly excluded. The defendant offered to prove by them, as experts, that a person could not tell, without critical examination, whether the couplings produced were fit for anything but old brass.

In the first place the defendant kept a junk shop & must be supposed to know the value of articles in which he dealt.

Secondly, the jury were as capable of judging as the witnesses what value a person, from common observation, would be likely to place upon the articles & what opinion he would form as to their usefulness for the purpose for which they were intended. It was not a question of science or skill.
It was a question of common sense and skill.

The defendant's third instruction as asked, was clearly erroneous. It excluded all consideration of the conclusiveness of the testimony. The weight to which the testimony of the good

Character of the defendant was entitled depended upon the character of the other evidence in the case. If it was positive & conclusive of his guilt, the evidence of his good character was not entitled to great weight.

1 Phill. Ev p 763 n 202

The instruction as qualified was very broad. It informed the jury that if they believed ~~from the evidence~~ there was any doubt of the defendant's guilt the evidence of good character was entitled to great weight. It neither directly or inferentially excluded the evidence from the consideration of the jury or determined its weight except so far as it implied that if there was not any doubt of the defendant's guilt the evidence of good character should be considered but that it was not entitled to great weight.

The authorities cited on the

other side relate to the admissibility of evidence of good character but do not conflict with the law as stated in the instruction & qualification

The fact that the qualification did not confine the jury to the evidence in determining whether there was any doubt of the defendant's guilt, was to his advantage & he ought not to be permitted to complain

The verdict was not against the evidence as will be seen from the following facts in testimony showing guilty knowledge

1st The def. kept a junk shop which although a lawful occupation, is one commonly followed by those engaged in the commission of offenses of this kind for the purpose of avoiding suspicion

~~and~~ The articles were purchased from a boy twelve years old who had sold def. brass & iron before. Def. did not look at the articles or ask the boy where he got them, but told him he would buy anything he brought him & if he got any more to bring it to him

3^d The articles were bought at an under value.

This is presumptive evidence that def. knew they were stolen

3 Arch. 480 2 Ruff. on Crimes 251

4th Def. denied having the articles & was very much scared.

~~He was not asked by the officer for comping but for keep -~~

The 63 Sec. of the Crim. code describes but one offence which may be committed by a person either by receiving for his own gain, or receiving for to prevent the owner from again possessing his property 6 Met. R. 241

It was intended to enlarge the English statute by including not only the receiving for the purpose of preventing the owner from obtaining his property, but also, ~~that~~ ^{gaining} for the receivers gain through the obtaining of rewards & other improper means.

The indictment charges that he received the goods for his own gain & the evidence shows both a buying and receiving.

There was nothing in the qualification of the peoples 1st instruction but what tended to def. advantage & therefore he is estopped from complaining of it.

As to the 2nd the failure to enquire where the boy obtained the property was a fact & proper to be considered with the other testimony. Ros. Crim. Ev. 875

If, by any forced construction,
this instruction can be made
to assume that anything was
proven, the qualification by
the Court which informs the
jury that "in all these matters
they will be governed by the
evidence in the case" corrects
it.

D. O. Jones

State Atty

J. R. S.
Chas J. J. J.
us.

The People &c

Peoples Point

Julius May 9 1864
J. J. J. J.

Supreme Court of Illinois
April 1. 1864

Charles J. Gault
Def. in Error

^{vs}
The People &c
Plts. in Error

Reply to People's Points

I enter upon this reply to the ingenious argument of the State Attorney, with solicitude - I did not defend this man in the Court below but I have become convinced of his entire innocence since my retainer in his behalf, uninfluenced by the heat of the nisi prius trial upon the unvarnished statements of the bill of exceptions, and in view of such belief I feel deeply the incapacity which prevents me from doing his case entire justice - Imperfectly however as I may discharge the duty devolved upon me, I think I can show just grounds for a reversal and entreat the Court to supply my deficiencies by giving the case such attention as

will insure their being with me
notwithstanding my argument

Mr. Jones insists that the boxes
coupling put in evidence was
handed to the witness "that he
might determine whether they
were the identical articles stolen"

I understand him to contend that this
coupling was either one of the
Twelve in question or one of
some number of which the twelve
formed a part.

This construction is contended for
upon the language used in the bill
of exceptions that the coupling was
handed to the witness for the purpose
"of identifying them"

The objection of the Counsel of the
Defendant below & the evidence in
the case, shows that this coupling
was not one of "them", viz, the
couplings -

The "them" refers to the Twelve &
the purpose of the offer was, to
identify them by something that

was not one of them.

There is no proof & no pretence that it was one of the couplets.

The witness, (Officer) says "They were like the one here"

Dana says (p. 4 abstract) "Three or four of the brass were like the one here - They were like these, only they had small shoulders the others were different"

Thus it appears that only three or four were like the one produced & that they had small shoulders therefore while this one resembled, it was not identical with any of the others -

Kervin says (p. 4) "I think they were like that - They were all just like that except one which was rough"

Williams (the thief) says, (p. 6) "The brass I sold him when Dana was with me, was some like that & some had the corners come out"

How in the face of his own testimony
can the State Attorney claim that
this brass coupling was one of
the twelve?

And how does it happen that
the People gave no explanation
of where this coupling came
from, if it were one of those
in dispute?

It was offered for the purpose of
identifying these brasses but
not itself -

The question is was that a proper
way to identify stolen articles?

Ought not the articles themselves
to be produced or a description
of them to be given? Ought
a stamp article to be introduced
& a description to be made out
by comparison - by comparison
not of one thing with another
but of a ^{recollection} description with a
thing foreign to the case?

It was never heard as thought of
until Mr. Jones made the point

5

that this was one of the stolen
couplings - It was not one
of them whence the objection
of the Counsel for Defendant below -

But if this case turned upon
whether this was or was not
one of the identical couplings
how on earth could the
man be convicted on the
proof just recited? For
the People's evidence established
as we have just seen that it
was not one of the couplings -

The principle objection to the introduction
of this coupling in evidence does
not seem to be fully apprehended

First we submit that no conviction
can in any case of larceny or
receiving or a like crime, unless
the goods stolen or received or some
of them are produced -

Where such articles are of so
ponderous a nature as not to
be easily brought before the jury
as in the ^{case} instance of the horse
as suggested by Mr. Jones, there of course

6

a description sufficient for identification
is the best evidence of which the
case is susceptible -

The rule respecting the production
^{the best} evidence is limited, as all ordinary
rules must be, by the qualification
"of which the case is capable"

Now ordinarily the best
~~such evidence~~ is the evidence would
be one of the twelve couplings, failing
which, one of a number of which
the twelve had formed a part & in
the absence of this, a description of
the twelve -

Such is the frailty of human recollection
however that the rule in a
criminal case ought to be and
we contend, is, that where the
articles or some of them are not
found at all, the defendant is
entitled to an acquittal -

Thus in State v Osborne, 1 Root 152
the Court refused upon an indictment
for counterfeiting a sixteen penny
piece, to admit testimony as to
the counterfeiting, until the piece
itself was produced. And so
in State v Blodget (2d. p 534) in

7
a case of forgery, the production
of the bond alleged to have been
forged was required -

And I can find no case
where a conviction was sustained
in the absence of what may
properly be called the "Corpus
delicti".

But secondly, assuming that a
conviction could be had in the
absence of the article, or in the
absence of possession by the
prosecution of them or some
of them, yet their non production
must be accounted for or secondary
evidence is inadmissible -

I admit that if the articles be known
to be in Defendant's possession &
he refuses to deliver them up, that
that is a sufficient explanation
of their non production -

But in the case at bar!

1. These couplings were not at
the time of arrest or trial in
Defendant's possession

2. The indictment charged the
receipt of Twelve couplings -

The proof was, "there were ten or twelve taken" (Pfinder p. 3)

It is not shown that the People had not some of the twelve or some of a number of which the twelve had formed a part. And the non production of the best evidence was not accounted for.

But thirdly - The true secondary evidence was a description of the twelve or some of them and this is the fatal objection to the introduction of this foreign coupling -

The ^{best} evidence was as we have seen: 1st The coupling of one of them 2nd One of a number of which the coupling formed a part 3^d A description of the twelve - This 3^d is secondary evidence which is of course the best when ~~the~~ ^{the} ~~primary~~ ^{primary} evidence fails -

The People did neither one thing nor the other - They did not give a description. They offered

a strange coupling for the witnesses
to swear at

What would Mr. Jones say
in the case supposed of stealing
a horse, if the witnesses, instead
of describing the horse, went
to work & described another horse
& then compared that other
to the one? Yet this is precisely
what was done in this case
with the exception that the
strange coupling was brought
into Court which the strange
horse could not be -

I shall feel extremely distressed if
the Court for a moment suppose
that this coupling was one of
the twelve - Mr. Jones is
excusable for so contending
because he knows nothing of the
facts but Mr. Knox, our State
attorney here, would not make
the point for a moment as he
knows that it was not true so
considered - And Mr. Jones
himself on page 2^d of his argument
concedes that it was not -

I am obliged to him for

making the point, ^{however} because although it is plain that that was not the position of the People on the trial yet it may be that the jury actually mistook it for one of the twelve horses & by their verdict have illustrated the danger to innocence ^{arising from} the admission of such testimony.

II. The State's Attorney requested the testimony offered to be given by Daley & Finney.

They were machinists and brass finishers of large experience & the offer was to prove that they could not tell without close inspection whether the couplings were good or couplings or only fit for old brass.

If experts could not determine that without careful & counting how could Defendant believe who knew nothing of such matters be put upon his guard on mere cursory inspection?

It is true that as a

general rule well knowing as
such are confined to questions
of skill and science but
there are many exceptions
15 Ill. 490, citing 4 Cow. 356;
18 Ohio 396 -

In valuing property, those acquainted
with the kind and use of such
kind of property, may be allowed
to testify -

The question, in the case at
bar was, 'was the Deft. below
justified in buying for old
brass? And that question being
determined by the value of the
articles, ^{the} evidence was clearly
competent -

The law has no other standard
of the value & as a fact
than the opinions of witnesses,
and those opinions are to be
regarded according to the measure
of knowledge or superior intelligence
of the persons testifying -

While this evidence was clearly
admissible on this ground and as
falling within the exceptions to
the general rule yet it may
fairly be insisted that it is admissible

as within the rule itself since the skill & science of the witnesses enabled them to demonstrate that the articles were of little worth to any person not possessed of the same knowledge as themselves.

III. As to the third instruction for Dict. below

I concede that the word "great" might have been used but I insist that the Court below qualified the instruction with because of the use of that word but because the Court supposed evidence of character to be of no weight except in a doubtful case which was undoubtedly the old rule -

The qualification really withdrew the consideration of good character unless the case were doubtful and if doubtful then the Jury might acquit without reference to good character -

After all whether the evidence of good character was of "great weight" or not depended upon the degree of doubt & I insist that

in this case the evidence of good character was entitled to great weight -

In answer to the objection that the qualification left the guilt to the belief of the jury and not to their belief upon the evidence, Mr. Jones says that that was to the advantage of Defendant -

This is not so - Although the qualification "if the jury believe there is any doubt of his guilt" allows them to indulge in doubts outside of the evidence & so may be said to be for his advantage, yet the converse of the proposition is also true and the jury are left at liberty to reject all doubts of his guilt provided they believe him guilty -

"If the jury believe there is any doubt of his guilt" is as different from "unless the jury believe there is no doubt of his guilt" & in either case the jury may believe him guilty or innocent outside of the case. If Mr. Jones means that

this is for my client's advantage
 because ^{he concedes} he is innocent & thinks
 the jury were permitted to find
 regardless of the testimony, perhaps
 I will waive the objection but in
 such case my client being
 innocently convicted ought to have
 a new trial -

IV. The verdict was against the evidence

- Mr. Jones says No, because
- 1 - The Dep. was a pink dash!
 - To this I have nothing to say -
 - 2 - The articles were bought of
 a boy &c
 - 3 - And at an undervalue
 - 4 - And Dep. denied having the
 articles & "was very much
 scared"

These last three alleged evidence
 of guilty knowledge I will discuss
 together except the latter part
 of no. 4 which is unworthy of attention.
 Flight at arrest is no indication
 of crime - Self-composure is a
 virtue but its possession has never
 been held essential to innocence -

^{claimed by the Prosecution}
The facts are that the boy who stole the couple's brought them to Defendant's store for sale -

He had been there ^{once} before which is mentioned by Mr. Jones as an suspicious circumstance but is quite the reverse - The fact that the Dep. had before bought of the boy explains why he was willing to buy of him again - It was competent for the people if Dep. had ever been guilty of receiving stolen goods, ^{before} to establish that fact but they did not attempt it - The brass & iron the boy had sold him before was the boy's & must be so considered -

The boy brought the couple's to Defendant in a bag - At the time Defendant said he would buy the brass (as brass) he had not seen it -

The thief (Milliam, p. 6) "poured them on the scales and the woman weighed them"

The Defendant did not take them up or examine them but poured them into a barrel, paid for the brass by the

journal & (if the People's case be true) entered the amount of purchase on his book which was brought into Court -

When arrested he said he had no brass there and in fact did not - would Mr. Jones have had him say he had, when he had not?

He told the officer Wolfe accounted for the brasses - He told him to take the account book if he chose - &c, &c -

~~and say~~ I have said & I repeat it that there is not a particle of evidence tending to show guilty knowledge unless the property was bought at an undersale which it was not unless the Deft. regarded the articles as couplings -

Did he? Should he?

I say no, because an expert even could not without close examination distinguish between whether these articles were good for couplings or old brasses -

But the verdict was against the evidence for another reason -

The Defendant was charged with receiving - the evidence was that he bought - He was not charged with buying -

When the Jury found him guilty of the offence charged they found against the evidence

The Statute says "buy" or "receive"

In my argument in chief I claimed that this constituted two offences & I still think so.

To this Mr. Jones replied that it is but one offence & cited

6 Met. 241 which seems to sustain him - But my point does not depend upon whether the offence is one but whether a def. can be convicted of an offence charged where he has committed in one mode when the evidence shows it was committed in another

In 6 Metcal 241, Major General Benjamin F. Butler raises two points both to the same purpose effect, 1st That def. was convicted

of two offences, or 2.^d That the Jury had not determined which of the two offences they convicted him for -

Shaw, C. J. says: ~~Whether charged to be done in~~ "It is made but one offence by the statute, although according to the language used, it may be committed in one of three modes; that is, by buying, receiving or aiding in the concealment of stolen goods - whether charged ^{to} ~~be~~ done in one, two or all the ways mentioned, it is still but one offence, and the general finding of the Jury is, that the offence was committed as charged - x x x "We have already said that either act is sufficient to constitute the offence & warrant the judgment -

I grant in the case at bar that "buying" or "receiving" are ways simply of committing the offence & that "either act" is sufficient yet I insist that a conviction is not good & judgment will be reversed on the ground that the verdict is against the evidence, ~~whereas~~

the offence is charged to have been committed by one act & the evidence shows that it was committed at all it was by another & different act -

Hence in Rep v McDermott Russell & Ryan's Crown Cases p. 353, upon an indictment under Lord Ellenborough's Act (43 G. 3 c. 58) that deft. did "strike & cut" &c with intent to kill &c the proof was that the wounds were by stabbing and not by cutting and the conviction was held wrong the judges being of opinion that as the Act uses the words in the alternative "stab or cut" so as to distinguish between them, the distinction must be attended to in the indictment

Yet in Rep v Hayward, (R. & R.C.C. 77) & Rep v Atkinson (2d. p. 104) convictions upon indictments charging stabbing and cutting were sustained upon proof of cutting alone -

If the indictment under consideration
had averred that the Dept.
did "buy and receive" I should
not have a word to say, but
it does not -

Apply another test - Suppose
a person charged under the
Statute with having "bought"
stolen property knowing it to be
such - He could assuredly
be convicted although he
never received the property
at all - This results from
the enlargements of the English
Statute in regard to receiving so
as to include buying -

All the pleader has to do is
to include both the is & the
He did not do it here & the
objection is fatal -

V-1 As to the 2^d People's instruction
Mr. Jones says that the failure
to inquire was a circumstance
proper to be considered & cites
Ros. Crim. Ev. 875 which does
not sustain him -

And I call the particular

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attention of the Court to the circumstances
enumerated on that page of
facts showing fully knowledge,
~~all~~ none of which are proven
in this case -

It is true the sale was by a
"boy" but that is of no significance
unless the articles were of "considerable
value" which brings us back
to our old ground that there
is no cause for suspicion
unless the articles were sold at
an undervalue or were of such
a nature as to appear to be of
considerable value - And
that is determined by their appearance.

This illustrates that the brass
coupling might not have been
admitted & the testimony of Daily
& Finnefar should have been -

I submit the case with regret
but there must be an end to
argument & I trust I have said
enough to ensure the reversal
for which I contend - I am
confident that the Court will fix
the case attention & therefore am
confident of the result though

I am so sure of my client's innocence that I remain anxious until that result is announced.

By a strange fatality another junk dealer had just been tried before my client & this case was also submitted without argument, both of which circumstances conspired to prejudice the jury as I fear - I believe the other defendant has followed my client into this Court but I have no apprehension that the two cases will be confounded.

W. W. Fuller
 For the Prisoner

I am much obliged to Mr. Jones for placing among the evidences of "guilty knowledge" that Deft. was a "junk dealer" - I rather think he was convicted on that ground -

7-109
Supreme Court
Charles J. Fitch

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The People &
us

Reply to People's
Points

M. W. Fuller
for J. Fitch