Wien, George v State of MO 1850 165/11
aka Weir St. Louis Co

Larceny

Livestock, evidence^, witnesses^

Victim Goldsmith, William H

State of Missouri, Ss.

At a term of the Saint Louis Criminal Court begun and held at the City of Saint Louis within and for the County of Saint Louis on the first Monday of September it being the third day of said month, and in the year of our Lord One thousand eight hundred and forty nine, were present the Honorable James B. Colt, Judge, James R. Lackland Esquire Circuit Attorney, John F. Long Esquire Marshal of the County of Saint Louis and Richard A. Howard Clerk of said Court,

Venire facias and Grand Jury

The Marshal returns here into Court the Venire facias to him directed with a panel of Grand Jurors thereon endorsed, who being called come as follows, to-wit; Joshua W. Owens (who is by the Court appointed foreman,) Dennis Lackland, Jacob Smith, Isaiah Brown, George K. McGunnigle, Walter Kinkead, James Sappington, Benoni Severson, John Evans, John Largy, Patrick T. McSherry, John Sexton, Charles Kennady, Adolphus Kerrh, Thornton D. Murphy, George A. Colton, Nelson Chamblin and John Rice eighteen good and lawful men who being duly empannelled and sworn and having received their charge from the Court, retire to consider of their presentments

Saturday 29th September 1849.

The Grand Jurors return to the bar and deliver the following indictment as a true bill, to-wit;

Indictment.

State of Missouri Ss.

County of Saint Louis } Saint Louis Criminal Court September Term 1849.

The Grand Jurors of the State of Missouri, within and for the body of the County of Saint Louis, now here in Court, duly empannelled, sworn and charged, upon their oath present. That George Wein otherwise called George Wien late of Saint Louis, in Saint Louis County, on the first day of June in the year of our Lord one thousand eight hundred and forty nine, at Saint Louis County aforesaid, with force and arms five red cows of the value of fifteen dollars each, five brindle cows of the value of fifteen dollars each, five black cows of the value of fifteen dollars each, five red and white cows of the value of fifteen dollars each, five black and white cows of the value of fifteen dollars each, five spotted cows of the value of fifteen dollars each, five yellow cows of the value of fifteen dollars each, five white cows of the value of fifteen dollars each, five cows of the value of fifteen dollars each, all of the property of William H. Goldsmith then and there being found feloniously did then and there steal, take, and carry away, contrary to the form of the statute in such case made and provided and against the peace and dignity of the State,

Endorsed "A true bill. Joshua W. Owings foreman" J. R. Lackland Circuit Attorney.

Upon which indictment the following Capias was issued — to-wit;

Capias County of St. Louis Ss. The State of Missouri to the Marshal of the County of St. Louis, Greeting: We command you to take George Wein alias Wien if he be found in your bailiwick, and him safely keep so that you have his body before the Honorable Judge of the Saint Louis Criminal Court now in session at the City of Saint Louis within and for the County of Saint Louis forthwith, to answer to an indictment found against him by the Grand inquest of the State of Missouri, for the body of the County of Saint Louis for grand larceny, contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State; and have you there then this Writ with your return thereon how you execute the same (S) Witness R. Richard T. Howard Clerk of our said Court with the seal thereof hereto affixed, at office in the city of St. Louis, this 29th day of Sept. in the year of our Lord eighteen hundred and forty nine R. T. Howard Clerk

Endorsed "Executed John F. Long Marshal"

Wednesday 10th October 1849.

Plea in abatement filed, — which is as follows to-wit: —

Plea in abatement State of Mo. vs Geo. M. Wien — Gd. Larceny. In St. Louis Criminal Court Sept 5 1849.

The Defendant in the above cause comes and asks the Indictment should abate, Because

1st. There is no sufficient legal certainty — the Indictment — it does not allege the offence with sufficient certainty to enable the deft to defend the same.

2d — The Deft is charged in the alternative. Which is inadmissable unless done in seperate counts.

3d — The allegations in the Indictment are repugnant and void for uncertainty

4th Because the Indictment is otherwise defective. Shreeve, Atty. Deft —

Friday 12th October 1849.

Arraignment Now at this day the said defendant being brought into Court in custody of the Marshal and having had hearing of the indictment and being demanded of and concerning the premises, and how he will acquit himself thereof says he is not guilty in manner and form as charged upon him in said indictment and for his trial puts himself upon the County and the Circuit Attorney doth the like.

Thursday 25th October 1849

Trial Now at this day comes the Circuit Attorney who prosecutes for the State and the said defendant being brought into Court in custody of the Marshal thereupon come a Jury, to-wit: Porter Capelle, Edward Torbert, William T. Essex, William T. Bull, William Ames, George McPhetridge, Robert Graham A. Haywood Charles L. Hunt, Jerome Mulliken, John Develin and William Smith, twelve good and lawful men who being duly elected tried and sworn the traverse between the parties aforesaid well and truly to try, and after some progress in the trial of the cause the Jurors aforesaid by

consent of the parties and under the Charge of the Court are permitted to disperse until the meeting of the Court to morrow morning -

Friday 26th October 1849.

Now again come the parties as aforesaid, and the Jurors aforesaid sworn in this cause appear in Court pursuant to their adjournment, and after hearing all the evidence in the cause the Jurors aforesaid by consent of the parties are permitted to return a sealed verdict, and being polled at the instance of the Court, the Jurors aforesaid upon their oath aforesaid say that the said defendant is guilty of Grand larceny in manner and form as charged upon him in said indictment, and assess his punishment at two years imprisonment in the Penitentiary of this State.

Saturday 27th October 1849.

Motions for a new trial and in arrest of Judgment filed, which are as follows to-wit

Motion for a new trial -

State of Mo

vs 1 - Indictment Gd. larceny in St. Louis Co Crim'l. Court Septr. 5 1849.

Geo. M. Wien 1 The Defendant in the above cause moves the Court for a new trial & in arrest

1st Because The verdict of the Jury was against the law.

2 Because It was against the evidence in the cause.

3d Because it was against the weight of evidence

4th The Court erred in refusing instructions asked by the Defendant. Shreeve p.g.

Motion in Arrest

State of Mo.

vs 1 - In Crim'l. Court of St. Louis County.

Geo. M. Wien 1 The Deft in the above cause moves the Court to arrest the judgt. in same & grant &c - Because the Indictment is defective in this - that the offence is not set out with sufficient certainty to enable the deft to defend against the same.

Because it is otherwise informal defective and void Shreeve p.g.

Thursday November 1st 1849.

Now at this day come the parties aforesaid ~~by their Attorneys~~ and thereupon the motions for a new trial and in arrest of Judgment filed herein, being argued and submitted to the Court and by the Court here fully understood, therefore it is considered by the Court that said motions be overruled, and it is also considered by the Court that the said defendant for his offence of Grand larceny aforesaid be imprisoned in the Penitentiary of this State for the term of two years, that he pay the costs of this prosecution and stand committed until this sentence be complied with; whereupon the said defendant files his Bill of Exceptions and prays an Appeal to the Supreme Court from the Judgment of this Court and-sued herein which is granted; and it is ordered that the said Appeal shall operate as a stay of proceedings herein - the following proceedings had on Thursday the 25th of October having been omitted by the Clerk

it is ordered that the same be entered "Nunc pro tunc" to-wit: The plea in abatement filed herein being submitted to the Court and by the Court here fully understood: therefore it is considered by the Court that said plea be overruled, and that the matters and things therein contained and set forth are not sufficient in law to bar or preclude the said State from maintaining her said suit against the said defendant.

Plea in abatement overruled.

The Bill of Exceptions filed herein is as follows to-wit:

Bill of Exceptions.

State of Mo
vs. } In the St. Louis County Circuit Court Sept. Term 1849.
Wm. M. Wiss }

Be it remembered that on the trial of the above cause the State introduced the following testimony,

The Deft Wiss came to me and wanted me to buy cattle for him, I refused - afterwards he came to me and told me he had killed a cow belonging to me by mistake, and desired it - I missed five cattle from my pasture near Rock Spring which I took from Bogue - I had my springer cows there - but I had no such cow as defendant described to me - a good butcher would know they were not fit for meat, but some of them would answer for butchering or breeding - deft lives opposite to me - a good plank fence around my place - and a lock on the gate, a person could knock a plank off and take cattle off. Deft commenced butchering in Sept last. My cattle had been in the pasture five or six weeks - I missed five cattle - and found three of their heads in defts field, one a yellow one, one brindle, and one kind back cow, with red & white back - there were other heads around without horns. The cattle I lost were worth $15. a piece.

Cr. Ex = I saw Wiss at work at his factory - Deft told me he had killed my cow. - I went in six or seven days to see, but I had not missed them before. I knew all the cattle there and saw them two or three times a week, I missed 1 red, 1 brindle but no black, white or spotted cow, one yellow cow - I found the three heads, one of a red heifer which I recognized by the horns being neat and nice, and the way they set upon the head - which differed in no respect from other horns except they were neat and nice. the next one I recognized was a brindle heifer - both horns not alike. the next one I recognized was a red cow with a white back - Deft said he wanted to pay for the cow he had killed,

Re ex - Deft never had any cattle in my pasture. different persons had cattle in my pasture but no one ever owned mine any.

John Mc Carthy - Knows Deft & helped him butcher. he got cattle out of this (Goldsmiths) pasture - two out of one pasture and two out of an other adjoining. the two driven out of Goldsmiths pastures were driven out about sunset, and killed at night, those killed from this (Goldsmiths) pasture were killed at night. he killed others in daytime. Deft had no cattle there but those

he brought out of the pasture - he put them in a pen on the road side which could be seen by close looking - One of them he took out of Goldsmith's pasture was killed that night. the other the next night - one cow was a motley faced brindle, I can't describe the other - a fence kept the pastures apart which was not down, one of them belonged to Goldsmith the other to Bogue - I don't know how he got the cattle from the pasture. Wien (Deft) butchered them and an Irishman & dutchman helped them. I was two weeks in his (Defts) employ and left because of a sore foot - I intended to return but heard he had been taken to town. I can't describe the two last cows he took from the pasture adjoining. I saw the cattle as they were driven out of the pasture of Goldsmith, as they were going up the hill - the same I afterwards saw in Defts pen. Goldsmith told me he wanted me to testify in this case. The hides of these cattle were sent away just as his other hydes were - he let none stay long about the place. deft were present when the cattle were killed & helped do it. He brought 3 others while I was there, and two the day I left.

Mr Bogue. Deft came to my house on Sunday morning and told me he had killed one or two of Goldsmiths Cattle by mistake. this was on Sunday morning he said he killed them the friday or saturday before. I do not recollect which. Goldsmith had but one pasture but he had some cattle in mine also, Close looking would see the Cattle in Wiens pen lot, where he killed them - the pen was seven or eight feet high. close & twenty or thirty yards from main road. I saw heads of Cattle about his house - six heads together, two or three hundred yards off in a field where the grass was knee high & cow used to be there,

Cr. Ex. deft told me he had bought two & taken two red cattle out of my gate which was done the front way. I paid $5 00 to a man that had cattle there for deft. he said the two he took out of the pasture were the two he had bought and that they had broken in there - the fence had been thrown down frequently - And this was all the evidence introduced by the State -

The defence introduced James Fanall,

I worked for Deft. while I was working there two of his cattle that he had bought a few days before got into Mr Goldsmiths pasture by breaking the fence down - we went in search of them - A man named Fred went with us - Fred said to Deft after we had been hunting them some time "here was one" deft asked him if he was sure - Fred said he was. We went in search of the other, and found the two heifers belonging to deft. - Deft had bought three cows about three or four days before. They were red cows with spotted face - and a brindle one - The Deft killed the cow that Fred pointed out to him - He never killed any other cow belonging to Goldsmith - I lived with him and saw all the Cattle he butchered.

Cr. Ex. - I am not a butcher, I have been with him since last August. When Deft commenced butchering I carried the heads and offalls of the cattle to the field spoken of to keep them from being smelled at the house, I had no other object but to avoid the smell

Rex = I know the defendants general character, and for truth and veracity - I have heard his character spoken of - he is considered an honest man.

John Davis. Knows the defendant has never heard anything against him.

Wm Shepbourn. Knows deft. has heard persons speak of him nothing against him.

And this was all the evidence introduced by the Defendant, and afterwards to wit on the same day the jury in the above case return for verdict. We the jury find the deft guilty and assess his punishment at two years imprisonment in the Penitentiary. And afterwards to wit within four days the deft by his Atty moves the Court for a new Trial (for motion see page 5?) which motion was overruled by the Court, and to the overruling of the same the defendant excepts and prays said exceptions may be signed & sealed by the Court. The instructions given are as follows to-wit;

No If the Jury believe from the evidence that the defendant did steal take and carry away any cows charged in the indictment the property of William H Goldsmith of any value whatever and that he did so steal for the purpose of converting the same to his own use and profit and that he did so steal in the County of St. Louis and within three years before the finding of this indictment you will find the defendant guilty and assess his punishment by imprisonment in the penitentiary for a term not less than two nor more than five years,

If you have reasonable doubt of the guilt of the accused you ought to acquit.

Instruction refused is as follows to-wit

If you believe from the evidence that the witness Goldsmith wilfully stated any material fact in the case falsely to the Jury are authorized to discredit the whole of his testimony.

And afterwards the deft moved in arrest of the Judgt. (see page 3?) which motion was overruled by the Court & to the overruling thereof the deft excepts and prays the Court to sign & seal his bill of exceptions. J. B Colt Judge St. Louis Criminal Court.

State of Missouri Ss.

County of St. Louis § I. Richard I Howard Clerk of the Saint Louis Criminal Court in and

for said County Certify the foregoing to be a full & complete transcript of the Record & proceedings in said Cause as the same remain on file in my Office,

In testimony whereof I hereto set my hand and affix the Seal of said Court at Office in the City of St. Louis this 25 day of January A.D. 1850

C. J. Howard Clerk.

61.

March T. 1850

State (28)

vs.

George Wiers apt

Transcript to Supreme Court.

Transcript, $2.50
Cert & Seal, .50
$3.00

Ex

Filed March 6. 1850
W. B. Starke Clerk

State
vs
George Wiens

Supreme Court
March Term 1850

Now at this day comes the State and moves the Court to affirm the judgment of the Saint Louis Criminal Court rendered in the above entitled cause for the reason That said defendant did not on or before the first day on which Causes from the same Circuit are set for hearing, nor has he yet assigned errors according to the requirement of statute in such made and provided

J. R. Lackland
for State

State
vs
George Wren

Mo to affirm judgt
because of no assignment
of error

Filed March 28th 1850
W. B. Starke Clk

Weiss vs State

At the September Term 1849 of the Saint Louis Criminal Court, the ~~Appellant~~ George Weiss was indicted for Grand Larceny: The following is a copy of the indictment - (viz:)

"State of Missouri }
County of Saint Louis } Saint Louis Criminal Court. September Term 1849

" The Grand Jurors of the State of Missouri, within and for
" the body of the County of Saint Louis, now here in Court, duly
" impannelled sworn and Charged, upon their oath present
" that George Weiss, otherwise called George Wiess late
" of Saint Louis, in Saint Louis County on the first day
" of June, in the year of Our Lord One thousand eight
" hundred and forty nine at Saint Louis County aforesaid
" with force and arms, five red Cows of the value of fifteen
" dollars each, five brindle Cows of the value of fifteen
" dollars each, five black Cows of the value of fifteen
" dollars each, five red and white Cows of the value of fif-
" teen dollars each, five black & white Cows of the value
" of fifteen dollars each, five spotted Cows of the value of
" fifteen dollars each, five yellow Cows of the value of
" fifteen dollars each, five white Cows of the value of fifteen
" dollars each, five Cows of the value of fifteen dollars each
" all of the property of William H Goldsmith then and
" there being found feloniously did steal and there steal
" take and carry away, Contrary to the form of the Statute
" in such Case made and provided and against the peace
" and dignity of the State"

Upon this indictment, the said George Weiss was arrested and ~~held to bail~~ On the 10th of October 1849, he filed a plea of which the following is a copy — "State of Mo. vs Geo. M. Weiss - Gd Larceny, In St Louis Criminal Court,

Sept. T. 1849 — The Defendant in the above cause comes and asks the Indictment should abate, Because 1st There is no sufficient legal certainty, in the indictment — It does not allege the offence with sufficient certainty to enable the defendant to defend the same — 2d The Deft is charged in the alternative which is inadmissible, unless done in Separate Counts — 3d The allegations in the indictment are repugnant and void for uncertainty. 4th Because the indictment is otherwise defective — Shreve atty. for Deft — "

On the 25th October this plea was submitted to the Court; and was overruled by the Court, The entry upon the record is such a judgment as would have been pronounced by the Court upon demurrer to the above plea — On the same day, the record states that the defendant was arraigned and plead not guilty — a jury was empannelled, and by their verdict, they convicted the defendant and ascertained his punishment to Six years imprisonment in the State Penitentiary —

The Appellant moved for a new trial,
1st Because the verdict of the jury is against the law —
2. Because it was against the evidence in the cause.
3. Because it was against the weight of evidence
4th The Court erred in refusing instructions asked by defendant —

which motion was overruled — and excepted to by Appellant — The defendant below then filed his Motion in arrest of judgment, alleging the insufficiency of the indictment — which motion was likewise overruled and excepted to — The defendant then prayed for an appeal, and brings his Case to this Court —

The evidence is set forth in the Bill of Exceptions; The Appellant, did not except to any instructions, which the Court gave and the instructions given appear by the record

to which we have no objection - We are satisfied with these instructions and they appear as follows - "If the jury believe from the evidence "that the defendant did steal take and carry away "any Cows as charged in the indictment, the property "of William H Goldsmith of any value whatever, and "that he did so steal for the purpose of converting "the same to his own use and profit, and that he did "so steal in the County of Saint Louis and within "three years before the finding of this indictment "they will find the defendant guilty and ascertain "punishment by imprisonment in the Penitentiary "for a term not less than two nor more than five "years - "If the jury have reasonable doubt of "the guilt of the accused, they ought to acquit" -

The instruction which the defendant below, (the appellant here) asked, and which was refused is as follows - "If the jury believe from the evidence, that the witness Goldsmith wilfully stated any material fact in the case falsely, the jury are authorized to discredit the whole of his testimony" - This appears to be the only instruction which the defendant below asked, on the trial - This was refused -

From this statement of the facts, it is obvious, that the action of the Criminal Court, in refusing the above instruction, and in overruling the motion for a new trial and in arrest of judgment, is properly before this Court for our consideration - The points on which the appellant relies for a new trial, is the refusal to give his instruction - If the Criminal Court erred in refusing the instruction, does it follow, that it also erred in refusing to grant the new trial? I will examine this

question - Instructions are given upon the facts in evidence so as to assist the jury in finding their verdict properly in regard to the facts and the law of the case arising thereon -

These instructions should not merely speak abstract legal principles - mere questions of law having nothing to do with the facts of the case: - and the Courts have uniformly refused such - and should refuse to give such in every case - The instruction asked for by the defendant in this case is of this character - It contains an abstract legal principle - It was known to every man old enough to be a jury man - Witnesses are introduced to enable the jury to find facts - and when a witness states a wilful falsehood before an intelligent jury, they know what weight to give to his evidence - If there had been in this case any ground to authorize the Court to point the attention of the jury to the testimony of the witness under the suspicion of his evidence being false, there was a more suitable, a less objectionable mode for the defendant to have adopted, in which this object might have been attained, than the one here resorted to - We are not inclined to favor the refusal of instructions in criminal cases, which if given might do no harm and yet might possibly assist the jury in coming to a correct conclusion -

The Criminal Court in this case might have instructed the jury as to their right and their province to weigh the testimony of each witness and to give such credence to the statements as they in their judgment thought just and consistent with the truth: and had the Court been called on properly, we have no doubt such would have been the case -

We will not therefore reverse for the refusal to give this instruction; though we would have been better satisfied, if the Court had given a proper and legal instruction on the subject of the

One here refused, than merely to refuse it in the shape in which it was asked—

This view of the subject, settles the point involved in the motion for the new trial—

Upon the subject of the motion in arrest, we will state, that in our view, the indictment is sufficient. We see no change in the alternative— We see no repugnancy in charging the stealing to be of Cows of various colors— The indictment is sufficient, and the motion in arrest was properly overruled—

This subject was brought before the Court, upon the plea in abatement if it can be thus called— The Court evidently treated that plea as though it had been demurred to— or as if it had been a demurrer to the indictment—

We find nothing wrong in the action of the Court upon this subject; nothing injurious to the rights of the defendant—

We have looked into the testimony to see if the verdict has any foundation on which to rest; and without expressing any opinion of ours or giving any intimation of our approbation or disapprobation, we say that from the evidence ~~xxxx~~ before them, we ~~think~~ feel ourselves not warranted in setting their Verdict— The judgment of the Criminal Court is therefore affirmed—

Concurred in:
Jas H. Rich.
W. B. Napton

John F. Ryland

Weis vs The State

Opinion by
Judge Ryland

Filed Nov. 5. 1850
W. B. Stanley. Clk

State of Mo.
vs
Geo. M Wein

Appeal from Crimel Court St Louis Mo. to Supreme Court Mch T. 1850.

This was an Indictment vs Deft instituted on 29th Sept. 1849 for Grand Larceny of five cows variously described in the Indictment the property of Wm H. Goldsmith. The Attention of the Hon. Court is respectfully invited to the testimony in the cause and I take occasion to say that the verdict rendered was to me truly surprising. I did not press the defence on the trial with much zeal entirely confidant as to the result. — It will be observed the Deft voluntarily informs the prosecutor Goldsmith that he had killed one of his cows, the witness was not certain if he said more — and also acquaints others of the fact and states the circumstances under which it was done and offers to pay Goldsmith for same. This was before Goldsmith had any knowledge of the fact, and the Deft as an honest man informs him & his other neighbour Mr Bogue thereof. His statement is corroborated by Bogue, the witness for the State & by Farrall in every particular.

The main point insisted on by the Deft is that under this evidence the Jury ought not to have found him guilty, and the Court ought to give a party a new Trial when the weight of evidence clearly shows the Jury either misunderstood or evaded the evidence. This Court has repeatedly decided that though the Jury is the Judge of the facts in the case, that when they have found manifestly vs. the evidence or the weight of evidence they will grant a new Trial — see x This appeal is taken because of the merits of the case. Wein is innocent

x State vs. Birds. 1st mo. 416. Archbold. 98 & 9

of this Charge in fact, and innocent under the evidence and has been convicted through the Instruction of the Court refused, Which was asked for by the Defts. (Which will be hereafter noticed) and Which refusal by the Court below was equivalent to an instruction to the Jury that they ought to believe the evidence of the Prosecutor Golasmith. The Court will bear with me While I refer to that Testimony. Golasmiths as it involves the propriety but as I concieve not the legality of the Instruction before refered to and which was overruled by the Court below. This witness identifies emphatically three heads of Cattle Which he says were stolen from his pasture. Which Cattle he had not seen for a week after the same were slaughtered, Skined, and the offal therefrom including the heads which were Skined and deposited upon the Cattle Pottersfield, he recognizes them by no particular marks, can give no discription of them further than that the horns of one were neat & nice the horns of another not exactly alike. and the other he cannot & does not tell how he recognized it. I regret the urgency with which he was pressed for particulars by which he identified them cannot be preserved in a Transcript. This identifying took place two several days after they had been in common with many others deposited upon this horned Golgotha. He also swears that Defts. had no cattle & never had in his pasture. a fact controverted by both Bogue and Farrell. He also swears no one ever sold him any Cattle that were in his pasture. a fact which

– it is impossible he should or could know –
Goldsmith differs from the next witness introduced
by the State in the description of the cattle killed –
And the Court will observe that the cattle charged
in the Indictment to have been stolen were 5 white &
Black – 5 spotted – 5 Yellow 5 White cows and 5 cows
the color of which is not given – Goldsmith swears
the cows which he identified by their skins heads
were one red heifer – one brindle heifer – and one
red cow with a white back – a total variance
in those charged in the Indictment –
Based upon this testimony and the manner of
the witness from which says Starkie "much may be
Gathered" but which cannot be embodied in a
Transcript – The Deft asked the Court to instruct
the Jury "If you believe from the evidence that the
witness Goldsmith wilfully stated any material fact
in the case falsely the Jury are authorized to dis-
-credit the whole of his testimony" _____
To support this instruction the Court is referred to
Starkie's Ev. vol. 1st p. 582 well settled ——

insisting that the circumstances, the evidence as stated
fully warrant this instruction – even if it were a question
of propriety to be determined by the Court – which is
denied — but should have been given by the Court and
let the Jury apply the facts —

The remaining point to which Court is invited is the
overruling by the Court "The motion in arrest – It is
needless to say this was the proper mode to reach
the defect sought to be remedied –

An Indictment should set forth the Offence with particularity - So as to enable the Deft. to defend every allegation therein - This Indictment is multifarious uncertain and unprecedented - And the result shows the evidence neither for State or defence applicable to it - To show the certainty required in an Indictment the court is refered to -

Wharton Cr. Law. p. 81. Jane vs. State 3d. mo. p. 45 -

All of which is respectfully submitted

L. M. Shrew
Atty Deft

State of Mo.

vs.

Geo. M. Shiew

" "

Brief & authorities

State of Mo
vs
Geo Weir } Supreme Court
March Term 1850

Geo Weir was indicted on the 29 Sept 1849 for Larceny on the 10 Oct 49 the deft filed a plea in abatement. for that the indictment was insufficient by reason of uncertainty.

On the 12 Oct 49 deft was arraigned and he plead not guilty & put himself upon the Country & the state did the like

On 25 Oct 49 a trial was commenced which ended on the next day which resulted in a verdict of guilty of deft and assessed his punishment at 2 years in the penitentiary

On 27 Oct 49 deft filed his motion for a new trial
1st Because the verdict is against the law
2 Because against the evidence in the cause
3 Because it was against the weight of evidence
4 The Court erred in refusing instructions asked by the deft

On same day the deft filed his motion in arrest for that the indictment is defective in this — that the offence is not set out with sufficient certainty to enable the deft to defend himself.

Both said motions were overruled by the Court & deft excepted

The Court instructed the Jury as follows

If the Jury believe from the evidence that the defendant did steal take and carry away any cows charged in the indictment the property of William Goldsmith of any value whatever and that he did so steal for the purpose of converting the same to his own use and profit and that he did so steal in the County of St Louis and within three years before the finding of this Indictment you will find the defendant guilty and assess his punishment by imprison

ment in the penitentiary for a term not ~~exceeding~~ less than two nor more than five years

If you have reasonable doubt of the guilt of the accused you ought to acquit

Deft asked the following instruction which was refused & deft excepted to wit "If you believe from the evidence that the witness Goldsmith wilfully stated any material fact in the case falsely, the jury are authorized to discredit the whole of his testimony.

Paint Argument &c

We pass by the plea in abatement, simply remarking that it is bad it presents a question of law & not of fact & alleges in sufficiency of allegations in indictment thus if true is not available by plea in abatement by motion to quash demurrer or motion in arrest. Deft waived his plea in abatement by pleading over to the merits.

There is no error in the instructions given and if there were error deft has waived his right because the record does not show that any exceptions were taken to the instructions given

The Court did not err in refusing the instruction asked for by deft ~~Such instructions~~ The giving of such instructions is a matter of discretion with the Court. The propriety of giving such instructions can only be made manifest upon the trial - by the demeanor of the witness and the matter testified to by him - or from the fact that he has been impeached and from these facts alone the court in its ~~[illegible]~~ discretion has to say whether such instruction were applicable if not applicable by the existence some one of the reasons above mentions then the instruction asked contains mere abstract law and the record does not show that any such instruction was applicable

The Court did not err in refusing to grant a new trial The evidence supports the charge & no error was committed by the Court

The Court did not err in annulling the motion in arrest. The allegations in the indictment are sufficient. The property stolen ~~&c~~ is described under the name of Cow a term specific in itself sufficient and the ~~color~~ color of the cows ~~&c~~ is also alleged.

This Court in the case of State vs Logan 1 Mo 377 ~~&c~~ decided ~~&c~~ upon an indictment for "stealing a book of the value of three dollars" that allegation was sufficiently certain and need allege the title of the book. The indictment in this cause certainly has more certainty ~~than it~~ than that in the case of Logan. It informs the defft with ~~what~~ what he has to answer & therefore sufficient.

J. R. Lackland
for State.

State
vs
George Ween

Statement of case brief
& argument by Lackland

State of Mo. } appeal from St Louis co.
Georgo vs. M Wien } Crim.l Court - to Supreme court

This was an Indictment vs. Def.t for G.d Larceny - under the 10th sec of Stat. mo. p. 359.
In trial of same def.t assigns following errors to have been committed by the court below -

The Court erred in overruling the motion filed by Def.t for a new trial -

error in overruling motion in arrest of judg.t -

the Court erred in refusing instructions asked for by Defendant -

Shrew
atty Def.t

State of Mo
v
Geo. M Wien

assign^d Errors.