State of Missouri v Marshall, Richard 1845

514/5

632/19

341 40

vastine (R)

John
JT Wilson

State R P

v

Marshall AD

July 64

Oct 65

Washington

Crim.

Marshall strangled wife [illegible]

hand Bake

Sentence to be hung

Stabbed with knife [illegible]

Murder & appeal

No appeal except

Holmes Wagner / Lovelace abs

Affirm

1 State of Missouri }
Washington County }

Be it Remembered that on the 27th day of November A.D. 1863. There was filed in the Circuit Court of said County an Indictment which is in words and figures as follows To Wit

Indictment State of Missouri } In the Washington Circuit
County of Washington } Court November Term. 1863

The Grand Jurors of the State of Missouri now here in Court empanneled Sworn and Charged to inquire within and for the body of the County of Washington in the State of Missouri upon their oaths present that Richard Marshall late of the County of Washington aforesaid on the fourth day of September eighteen hundred and Sixty three with force and arms at the County aforesaid in and upon One David Baker in the Peace then and there being feloniously wilfully deliberately premeditatedly and of his malice aforethought did make an assault, and that the said Richard Marshall with a Certain Knife which the said Richard Marshall in his hand then and there held the said David Baker in and upon the Neck and throat of him the said David Baker then and there feloniously wilfully deliberately premeditatedly and of his malice aforethought did

2 Stroke and thrust giving to the said David Baker then and there with the knife aforesaid in and upon the Neck and throat of him the said David Baker One Mortal Wound of the breadth of Six inches and of the depth of three inches of which said Mortal Wound the said David Baker on the fourth day of September eighteen hundred and Sixty three at the County aforesaid of the said Mortal Wound Died. And so the Jurors aforesaid upon their Oaths aforesaid do say that the said Richard Marshall the said ~~the~~ David Baker in Manner and form aforesaid Feloniously Wilfully deliberately premeditatedly and of his Malice aforethought did Kill and Murder against the Peace and Dignity of the State of Missouri

D. C. Tuttle Cir.
Atty Pro Tem

Upon the back of which Indictment the following endorsements were Made State vs Richard Marshall. Indictment for Murder. A True bill G. B. Cole Foreman. Witnesses David N. Baker. Catharine Baker. Martha Goff Benjamin Wilsey. Wm H. Baker. James Hogan. Filson Yawbery. Dan'l G. Yawbery Jos. Bass James Pratt Filed Nov 27. 1863 W. A. Mathews Ck

3. And afterwards at the December Term 1863. The following proceedings were had in said Cause

State

Plea of Not Guilty. vs. Richard Marshall } Prisoner arraigned waived the reading of the Indictment and enters the Plea of Not Guilty and on affidavit of the Defendant the Cause is Continued

And afterwards at the May Term 1864. The following proceeding were had in said Cause To Wit.

Jury Sworn. Now at this day Come the attorney for the State as well as the said Defendant in his proper person who having been heretofore arraigned and entering the Plea of Not Guilty now put himself upon the Country and the attorney for the State doth the like Thereupon Come a Jury To Wit James Bays. William Dill William Smith Joseph Myers. Archer Conway. Henry Knorp. Westley Crap Conway. Edmond Boyer. John F. Miller Thomas Maxwell Henry G Hicks and Henry Pickett Twelve good and Lawful Men who being duly elected tried and Sworn well and truly to try the issue joined

between the parties aforesaid. and the evidence not being Concluded Court adjourned till tomorrow 9. O'clock, Saturday May the 28th 1864 Court met pursuant to adjournment When the following proceeding was had To Wit.

Now at this day Come again the parties aforesaid and also the Jury aforesaid and the evidence being now Concluded. and the Cause being argued by Counsel on both Sides returned into Court the following Verdict To Wit. - We the Jury find the Defendant Guilty of Murder in the first Degree in Manner and form as Charged in the Indictment William Smith Foreman W. H. Dill J. W. Conway Henry Knorp Edmond Boyer Henry C. Pickett James Pays S. G. Hicks John F. Miller Joseph Myers Archibald Conway Thomas Maxwell

Verdict of the Jury

And at the Same Term The following proceedings appears of Record in Said Cause To Wit.

Sentence of Court.

Now at this day Come again the Said parties and the Said being demanded of the Court if he has any thing to Say Why Sentence of Death Should not be passed upon him. Says. No thing Therefore it is Considered by the Court

5. That on the Ninth day of July Next. between the hours of Three O'clock P. M. and Two O'clock P. M. of that day that the Said Richard Marshall be taken by the Sheriff of this County to some Convenient place in the Town of Potosi in Said County of Washington and that there on the day and between the hours aforesaid he be hanged by the Neck till he is Dead It is further Ordered That the Sheriff of this County Convey Said Richard Marshall to the Jail of St. Louis County for safe Keeping

Motion for New Trial and Overruled

The Defendant by his Counsel Moved the Court to grant him a New Trial in this Cause Which Motion was by the Court Overruled

Whereupon the Defendant filed his Bill of Exceptions and prayed an Appeal to the Supreme Court which is Granted by the Court. Which Bill of Exceptions are in Words and figures as follows To Wit

6

Bill of Exceptions

State
vs
Richard Marshall

Indictment for Murder
In the Circuit Court of
Washington County. May
Term A.D. 1864

Be it remembered that on the 27th day of May A.D. 1864 the above Entitled cause was brought on for trial the Prisoner being arraigned Pleaded not Guilty and put upon trial on a Charge of murder in the first degree and then and there the following proceedings were had
The Jury was Summoned by the Sheriff by virtue of an order of the Court whereupon the Circuit Clerk issued a Venire directed to the Sheriff of Washington County of which the following is a copy

State of Missouri
Washington County } ss. In the Circuit Court

State
vs
Richard Marshall

The Sheriff is Commanded to Summon fifty (50) men as Jurors in the above Entitled cause to appear at the Court House in the Town of Potosi at 9 O. Clock A. M. on Friday the 27th inst

Test. William A. Mathews
clerk

Without affixing the Seal of the Court to the Same. That the Sheriff made no return upon said Venire but Brot into Court a list of names upon a Slip of Paper and the Jury was listed as the Sheriff had listed them as

as he Summoned The Jury were not drawn from the Ballot Box but were called up four at a time and Sworn and tried as to Competency on their voire dire until Thirty Six declared by the Court to be Competent by the Court were Selected

In trying the Competency of Jurors on their voire dire The Court propounded to one Henry Beard a Juror the following interrogatories to wit

Ques. Were you on the grand Jury when Richard Marshal was indicted for Murder

Ans I was not.

Ques Do you Know any thing in reference to the Murder of David Baker in Sept. 1863

Ans. I have heard it rumored or Spoken of

Ques have you Ever heard any of the parties or witnesses Speak about it

Ans Not that I Know of

Ques Who have you heard talk about it

Ans. I don't Know who I heard the rumor about it when it occurred

Ques did you Ever talk about it to any person who pretended to Know the facts in the Case

Ans. I don't think I did they were Just talking what they heard

Ques have you formed or Expressed an opinion as to the guilt or innocence of the prisoner

Answer I have not Expressed any opinion. More

v I dont know that I have formed an opinion

8 then this thing that if the accounts I heard were true he was guilty

Ques. Would the impression made on your mind prevent you doing the prisoner Justice if the Evidence Should be different from what you have heard

Ans. I think it would not

Ques have you any prejudice against the Prisoner

Ans. I have not.

Question by Prisoners counsel

Did what you have heard about the case make any impression upon your mind of the Prisoners guilt

Ans. I cannot Say that it did not

The counsel then objected to the competency of said Jurors which objection was by the court overruled

Thirty Six Jurors declared competent by the court very selected a Jury of twelve men as follows

William Smith foreman W. W. Dill J. W. Conway, Henry Knapp Edmund Beyer Henry C. Bequette. James Beys. R. C. Hicks John. F. Miller Joseph Myers Archibald Conway and Thomas Maxwell were Elected and Sworn to try the cause. The Circuit Atty then introduced the following witnesses on the part of the State

9. Joseph. Bap. called and Sworn upon the part of the State and testified as follows
about the 4th of September last David Baker. David N. Baker and. Richard Marshal came to my house. I had been from home that day, after I got home David Baker came there to my Store he had been drinking after that Hogan Marshal and. David N. Baker came to my Store, Hogan and. William. Baker left for Home about Sun 1/2 hour high about Dark David Baker David N. Baker and Richard Marshal left for home. David N. Baker. and. Hogan his Brother in Law came to my house that night after a. Warrant for. Marshal, I did not. See the old man Baker after he was Killed David Baker lived about 2 1/2. Miles from my House from appearances was no ill feeling between David Baker and. Richard Marshal. A t. one time Marshal. Said he had a Settlement to make with David Baker for reporting him to the Soldiers The. Place where the old man. was Killed was in Washington County M. O. it was from. 2 to. 2 1/2. Miles from my house to David Bakers

Cross. Examination when they Started from my House they took one quart. of Whiskey with them David N. Baker took Charge of the whiskey when they Started —

10 Some time before that Marshal said he and David Baker had talked over this matter and he was satisfied that David Baker had been lied about. And they both worked for me together and both seemed to be friendly

Recalled Richard. Marshal Bought and took away with him one dollars worth of coffee the night. David Baker was killed

James. Hogan was then sworn on the part of the State and testified as follows

I had been with David Baker all the day he was killed. The next I saw him he was dead. we had just got in the house at. David Bakers. when David N. Baker came and called me out. I asked him what was the matter. he said Marshal had killed his Father. which Evidence was objected to by the counsel for. The prisoner. for the reason that it was improper Evidence

The. court. sustained the objection holding that David N. Bakers statements were inadmissible

as soon as we could we went. after the old man it was dark we could. hardly see the road we found David Baker lying on his back. dead when we found him we found two stubs on his side. next. morning when the old man day it looked as if a good deal of scuffling had been done on our way when

11 (12)

he was Killed, we met the mare that David N. Baker had been riding that day after we got there we found the Saddle and Bridle lying close to the old man, we found one or two grains of Coffee on the Ground

Crosf. Examined The old man Baker was my Father in Law and David N. Baker is my Brother-in-Law a little over half way from his house and where the old man was Killed we met the Mare She was a gray mare, She turned out of the Road in the Brush and passed us I did not See any Knife there that night I Saw the Knife afterwards that he was Killed with, there was Blood on the Knife I did not See any Bottle there that night I heard Something about a Bottle of whiskey being found on the Ground, where the old Man Baker was Killed, after we found the old man Baker was Killed, after we found the old man we went to Bap. Store remained there about 1/2 an hour and then went back where the old man Lay, we went and got a wagon and took the old man home David N. Baker William Baker and my Self Benjamin Nuber is a Son in Law of the old Man Baker, I Saw Some one have the Knife the next day the Blade was broke about in the Middle it was a Single Bladed Knife it was David N. Bakers he had carried for Some time before that The girt of the Saddle was cut

close to the Saddle. I Saw Blood on the Saddle Before and Behind I Saw a cut. on the mare on the Same Side the Gust was cut David N. Baker left. home that day on the Same Mare with the Same Saddle and. Bridle when he came home that night and. called me out. he Spoke loud to me. in his usual tone of voice he Said the old man was dead

James. Pratt Sworn for the State and testifies as follows I was. a Juror on the Coroners inquest held upon the Body of David Baker I was on the ground where the old man was Killed we found one or two grains of Coffee on the ground where the old man was Killed I Saw a Shirt. produced on the inquest Said to be the Shirt. that David N. Baker had on the. Day his Father was Killed. There was Some Blood on one of the Shirt. Sleeves I Saw the wounds and Examined them, The cuts. on his throat was done from the right to the left. Side, There was but one cut on his Side that I Saw, on the ground where he was Killed we found a piece of. flesh with his beard on it. his throat was cut from Ear. to Ear

Cross. Examined he was Killed on Saturday the inquest was held on the following Sunday The first time I Saw the old man after he

13. # was due was at his house, I saw a part of a Knife, The cuts on the throat were purtiff cuts the old man Baker was a very large man at least six feet tall I think

Mrs Catherine Baker Sworn for the State and testifies as follows, Richard Marshal came to my house that Evening my husband was killed about 3/4 of an hour after my Son David N. Baker came home and stated that my husband was killed his hands and clothes were Bloody

Cross Examined I am the mother of David N. Baker It was about half hour after dark when Richard Marshal came to my house, he did not stay but a short time, he did not stay but a short time, my husband was brought home about Midnight I saw the Saddle the next day, The girt of the Saddle was cut. I did not see any Knife belonging to David N. Baker I saw it after they found it, I don't recollect of there being any Blood on the Knife when David N Baker when he came home was a little under the influence of Whiskey when Marshal came there he was very drunk he could not walk Straight, David N lives about half mile from our house he started home after Midnight came home back after Day light. next Morning I saw no Blood on his Shirt he had on a home made

14 Cotton Shirt

Simon O. Farrel Sworn for the State testifies as follows, I saw Richard Marshal the night D. David Barker was Killed he came to my house after a warrant. There was a little stain of Blood on his Shirt Sleeve near the rest Band

Martha Goff Sworn for the State and testifies as follows, I know the Prisoner. on the 31st day of August last I heard Richard Marshal Say he intended to Kill the old man Barker, I met him by the Side of our field he had been drinking my night. I met he commenced on me and Said the old man Barker had been carrying News. And. Made a fuss.

Cross. Examined where I met him was 40. or 50 yds from the House out Side of the field I was going home I had been down in the field after Plums, there is Plenty of Plums got ripe in August, I was in Conversation with him Some ten minutes Marshal was under the influence of Whiskey he got between me and the house and would not let me Pass. it was 3 or 4 Months before that I had been Marshal I think it had been nine Months Since I had been him to Converse with him, it was at his house in the Day time at his House I then Stayed all night. at Marshals House

I met Mrs Griggs at Marshals House I was
not at Marshals House about 3 weeks before
the old Baker was Killed. I recollect of it
changing some wood in the Spring with Mrs
Baker. I was Sworn on the Examination
before Justice Bass as a witness against
Marshal. I testified the Same before him
as I have here as near as I can recollect
I met Marshal as I was going to Bayes Some fire or Six weeks before the
old man Baker was Killed I did not
Sleep in any place the night I Slept
at Marshals, Marshals wife was
about to be Confined was the reason I
was at Marshals

Jillson. Jacobury. Sworn for the State and testified
I know the prisoner. have known him for
4 or 5 years I have heard Marshal. Swear
he intended to Kill Baker it was about
Some Mineral Ground

Cross. Examined I live 5 or 6 miles from Marshals
I Saw him at Simon O. Farrels at
the time he made the threats, my Brother was
present, only us three were together, I knew
Marshal when I Saw him but had no
intimate acquaintance with him, we met at
O Farrels mill we got to talking about mineral
ground was the way we got into Conversation
I don't know who commenced the Conversation O Farrel had gone to the P.O. office

1 1/2. Miles distant, [illegible] and my Brother did not Stay until [illegible] Came home we left Marshal at the Mill, Marshal came in a Cart to the Mill, I am a Brother in law of David N. Baker, Marshal had been in his Cart. I went after meal I did not meet to get it, I was not Examined before Esq. Bash It was about 3 weeks before the old Mans death, I was not at the Coroners inquest I heard of the old mans death the next day after he was Killed, I am Sure I never told any one what I have Sworn to here I had not Seen Marshal for nearly a year before that to Speak to him, I never have Sworn to it I told my Mother of it

Daniel Gaubury Sworn. I Know the Prisoner I heard Marshal Say he would Kill C. Goff or the old man Baker and would not rest Satisfied until he did it I think it was about 3 weeks before the old Man Baker was Killed I am a Brother-in-Law of David N Baker, No Connection to the old. Mans Baker, This Conversation took place near the old Mans Baker's House in the Road. I met Marshal I never heard him make any Threats at any other time, my Brother Jillson was with me, Marshal was on foot I am Sure I never told any one what I have Sworn to here, I never was on intimate Terms with Marshal

17. 1A (18)

David N. Baker Sworn for the State Testifies as follows

Marshal. Father and my. Self were at the Store of Bass and we Started home I was riding and they were walking we went about 200 yds and Marshal. Borrowed my Knife. and we went on Some three fourths of a mile. I heard a lick and Father fell out at the right. hand Side of the Road Father Said to me David I am a dead Man. I Jumped off my Horse to help him up I went round to help him up Marshal. Said if you do I will Kill you both. he Struck at me and I broke and run he run me about. 50. yds before I got rid of him I then went on to Fathers House for assistance I Called at. James Hogans and told him that Marshal had Killed Father. Benj Baker Brother William and Hogan went back with me when we got half way we met my Mare Coming without Bridle or Saddle. we went on and found Father lying on his back with his throat cut from. Ear to Ear there Lay my Bridle and Saddle by Father - I did not Stay there long, Hogan and my-Self went up to Bass to get a warrant for Marshal and did not. Stay long came back and went and got a wagon and Team and took Father Home. left. my mare Standing in the Road when Marshal run me away I had not time to get on her

18 I found Hogan. Bailey and Brother Wm at Fathers House, I did not go back to the place where he was Killed nex morning I saw some coffin lying there where he was Killed. I did not see Prisoner till nex Evening when he was brought to Fathers House a Prisoner

Cross Examination I went to Bass Store in the Evening I suppose the Sun was about an hour high Mr. Marshal was Northcutt with Smith Jackson, Northcutt is not between Fathers House and Bass Store, Marshal and Jackson was going in the direction of Northcutt but he and Marshal turned around and went to Bass Store I do not know what caused Marshal to turn Back there was nothing said by either of us about going back to Bass Store to get whisky Marshal and Jackson had whisky with them they were both riding one nag I do not know which had the whisky, we took a drum together at the time I met them they were a mile and a quarter or half from Bass Store it was along in the Evening I suppose about two hours by Sun we stayed at Bass Store until between Sun down and dark I do not know what Marshal did there I took a drum of whisky there I do not recollect of Marshal drinking at

at Bass Store I Bought a Bottle of whisky to take home with me one Gar. Fathers and I had no difficulty or words on the Road home Father did not threaten to arrest me on the way home did not meet any one on the Road home from Bass, Loaned Marshal my Knife about two hundred and fifty yards from Bass Store, at the time I was on Horse back and he on foot. I stopped my Mare to give him the Knife, Marshal went on with the Knife, I went on with him as I kept along with them — Father and Marshal were both on foot. This was about Three fourths of a Mile from where the old Man was Killed. did not ask Marshal to give my Knife back, Marshal did not offer to give the Knife back, I heard no Conversation between Marshal and Father about Marshals having the Pistol or charged no hard words passed between Father and Marshal that I recollect. of do not recollect what they were talking about I was behind them when the lick I spoke of was struck they were a few steps ahead of me in front, Marshal was at my Father left at the time, Marshal is a left handed Man, and used his left hand Marshal struck at me with his left hand, I did not let him strike Father, it was dark when I left my Horse standing in the Road do not

Know where he went I was not watching him I cannot tell whether I went a little to the right or left but think I was immediately behind them I got off my Horse on the near side, The near side is the left side I went in front of my Horse when I went to assist my Father I did not see him strike my Father after I got off my Horse, when he pursued me. ~~I went~~ I went towards my Father hoped I run as hard as I could and as fast as I could all the way, Suppose I was twenty or twenty five minutes going the distance, we went back as soon as we could I suppose it took us half an hour run as fast as we could I went on the Porch at Fathers before I called Mr. Hogan called him by name he came about half way across the Porch and I told him what had happened the reason. I called him out was that I was fearfull that it would frighten Mother and the Girls if I told them first. I spoke in my usual tone of voice when I told Hogan the Door was open when I told him. I think the Door was open when I called him I did not see Hogan when I called him I knew he was in the House by hearing him talking I was going from the Gate to the Porch when I heard him talking the gate is some six steps from the Porch called him out and told him so that Mother and Sisters should not hear me for fear of fright

hearing them If the Door had been open and they had been in the room She could have heard me told Hogan when I was coming from The Gate to the Porch I Suppose I could have heard Hogan talking if the Door had been Shut when I Spoke to Hogan if Mother had been inside I Suppose She could have heard me, I don't know why I Spoke in my usual tone of voice but I did So, persons going on that Friend to not. Exactly know how loud they do. Speak I immediately my Self and the three others Started back where the old man was Killed I had on a Home Made cotton Shirt, The. boy my Father was Killed, The. cloth was made at Home, put that Shirt on in the morning when I Started to the House raising, The Shirt was white or nearly So The Shirt was clean when I put it on after I Brot. the old man home I Slept until between one and two O clock, and got to my House Just as the clock Struck two in the morning then I went to Bed and Slept Some, Young Miss Shook was at my House also Susan Hopkins I went into the house in my usual Manner The Door was not locked there was a chair against the Door and I Shoved it open I went in did not throw the chair over I related to my wife in my usual tone of voice what had occured

22
#

I did not inform Miss Shook and Hopkins that night of what had taken place, I did not inform Miss Hopkins & Shook at all of what had taken place with my Father. I took off my Shirt that night when I went home I put on a Hickory Shirt, my Shirt was wet with Sweat from over exertion was the cause of my taking it off there was a little Spot of blood on the wristband of the Shirt about as big as a fine cent piece. I do not know when the Shirt was washed it was taken before the Coroners Jury there was a Spot of blood on it they found on it The Saddle Thread was James Rogans The Saddle girt was cut There was Blood on the Horses mane. the Horse was Easily caught. I Could not get to my Horse was the reason I did not ride when I went to give the information I had to run to Save my own life I am never Sighted

Question what did you do with the whisky you Bought at Bop Store

Answer I don't think it is any of your business what I done with it

Question what became of the whisky

I do not know what became of the Bottle or whisky I did not have the Bottle or whisky when I got to Fathers I did not take it home with me in running the Bottle was lost And I do not know what became of it I do not know that it was found that

night, I do not know that it was found next day, I have not seen the Bottle since that I know of, I had the Bottle in my bosom when I got off the mare to assist Father when he was struck That is the last I know of it. Marshal was some under the influence of Liquor when we left Bapes But I did not think much Marshal Bot no whiskey to take home that I know of. we did not down to between Bapes and the place where the occurrence took place

Question Did you and your Father ever have any difficulty

Answer. I do not. Consider that a fair Question

The counsel for the Prisoner insisted upon having an answer to the Question whereupon the court decided that the Question was not a proper one and ruled the Evidence out

Question Did you Previous to your. Fathers death Threaten to take his life.

Which Evidence was objected to by States atty and ruled out by the Court To which ruling the counsel for the prisoner Excepted –

Question. Previous to your Fathers death did you forbid him and your Mother your House which was objected to by States atty and objection sustained by the court to which decision the Prisoners counsel. Excepted

Question did you and your Father have a fight on this or near the same spot of ground where he was killed at a previous time To which Evidence the State's atty objected and the court sustained the objection to which the counsel for the Prisoner Excepted.

Question did you at or near the same spot of ground where your Father was killed previous to this time draw a knife on your Father and threaten to kill him which was objected to by States atty and objection sustained by the court. To which decision the counsel for the prisoner Excepted

I do not know how I feel towards the Prisoner I feel unfriendly I did not inform Miss Shook and Hopkins that night and run away before they were up in the morning. I did not take the trouble to wake them up to tell them I had no other reason Except what I have stated I saw Mrs Marshal at Fathers house that night after he was killed I think she stayed there from friday until Sun-day Evening She started for home and was stopped She was at Fathers house when he got there one of my sisters came with Mrs Marshal, she had gone home with Marshalls children from School to stay all night and I think from what I heard Marshal

lume with them but did not come to the House but
Stayed out in the Brush, I found some Coffee
near where the old man Lay. Some thing like
half a Dollars worth, it was Scattered on the
Ground, I do not recollect what Coffee was worth
at that time did not use the Candle for the
purpose of seeing how much Coffee there was
I don't know that we used the Candle Expressly
to hunt the Coffee, I don't know but think
the Coffee was put up in a Brown paper
I don't know that Marshal had it tied
it up in a Handkerchief, I do not recollect
of seeing a Paper of Coffee that night
when we went back did not find the
whisky Bottle there near my Father that
night, The Saddle was lying by the Side
of my Father perhaps against him I did
not Examine the Cut on the old mans
neck at any time I was Sworn before
Esqr. Bufs. on the Examination of Prisoner
I Bot Some goods at Bufs for my brotherinlaw
I Stated on the Examination before
Bufs that when I left Marshal that
I went to get assistance to bury Father
when I left I did not know that my Father
was dead I think I testified to the Same
before Bufs as far as it went, when I
went home to get assistance I did not
take any weapons of defence with me, when
I went back I do not know what the other

26 had. I saw coffee at Fathers house. next day after Mrs Marshal Burnes wife went and got it, where it was last. I don't recollect of seeing the paper the coffee was done up in I think it was in a cloth. I think she went by the house after the coffee. Fathers family and Marshals were on friendly terms at that time I heard no dispute between Marshal and my Father that day

Re examined The Blood came on my shirt by putting the old man into the wagon

Cross. Examined I did not see the Blood get on for the reason that my arm was under him and when I took it out. James Hagan and Brother William told me to wipe off the Blood with some leaves they said they wanted me to wipe it off on account of the looks of it. They said they did not like to see my Fathers Blood on my hands and shirt. and told me to wipe it off. One of the jurors took the same shirt. before the coroner he asked me and I showed him the shirt he took it himself

Simon. C. Farrel. I acted as coroner I am a justice of the peace the Jury went to the place where the old man was killed we found some coffee and some hair one of the Jury found a knife some ten or twelve yards from the place where the old man was killed

27 ~~22~~ one of the Jurors took the Knife to Burrs House Knife Shown to witness thinks it is the Same one

Cross Examined The Knife was taken when the old man was Killed and his house I Examined the Body of the old man with the Jury there was a cut in the Side, of the abdomen don't recollect which Side of the Body The intestines protruded quite largely I looked at the cut on the Throat

State closed

James Pratt Sworn for Prisoner I was one of the Jurors on the inquest held on the Body of David Baker I saw a Shirt that was Said to be the one that David R. Baker wore. Saw Blood on it on one of the wrist-bands, I Examined the Body of Baker Saw a cut on Bakers Side I think it was on the right Side I Examined the cuts on his Throat can't Say which way the cut was made whether from left to right or right to left.

Michael Flynn Sworn for the prisoner I know Julien Gawbury and his Brother Swan have been Known them for 4 or 5 years I live about a Mile from them Some people complains of their Character from what the People Say of them they are not respectable

John E. Smith Sworn for Prisoner

~~23~~
28

I know Julien and Jefferson Gawbury have known them for 7. years I live a little over 1/4 of a mile from them have heard them spoken of. what is their general character for Truth and veracity. the People don't think much of them

Paul. Douglas Sworn. Says he knows the two Gawburys Sworn on this trial have known them for 7 years live 1/4 miles from them have heard the neighbors speak of them from what they say their character is not very good for telling the truth have heard perhaps 1/2 doz speak of them

Susan Hopkins Sworn. I know David N Baker have known him about 3 months I don't remember when the old man Baker was Killed I saw the old man after he was dead I was living at David N Bakers when the old man was Killed had been living there about a week I did not hear David N Baker when he came home the night the old man was Killed, I heard he was Killed the next Morning I was subpoenaed as a witness before the magistrate on the examination of Marshal also before the Coroner Sum't County before I was examined Mrs Gawbury told me to go and stay with Mrs David N. Baker as she was sick, I saw

I saw the Shirt that David R. Baker
wore the night the old man was Killed
I saw no Blood on the Shirt he had
worn the Shirt all the week I Examined
the Shirt. his wife told me to Examine it
I washed Some clothes, I washed Some
Pants his Pants were Jeans I was Empl
oyed to work in the family he. Pulled off
the Pants in the morning after the old man
was Killed I washed them the Same week
but not the Same day that he Pulled
them off I washed them after I was a
witness before the Coroner I washed no
clothes that week before I washed the
Pants. I Examined the Shirt and
found no Blood upon it. I am
Sure that the Shirt that Mrs Baker
requested me to Examine had no
Blood on it it was a white Shirt
I think home Spun I Suppose Mrs
Baker thought I would be a witness
the reason She Showed me the Shirt
I looked to See if any Blood was
on the Shirt

Cross. Examined the reason that Mrs Gawlay
told me to go and Stay with Mrs
Bakes She was Sick

Milton Bill Sworn I know David R. Baker
have Known him Since he was a Boy
I never heard his reputation for truth

30

30 and veracity called in Question

Francis Douglas Sworn I know the two Gaubrics here known them 25 years live about two Miles from them have heard the neighbours speak of them

Simon. O. Flavel. I know Gilson and Jefferson Gaubury have known them Since they were Boys their reputation for Truth and veracity is bad in that neighbourhood

Charles L. Goff knows David N. Baker and the old man Baker have known him when Some down him Spree

Question do you know of David N. Bakers threatening the old mans life

Objected to by State's atty. and objection Sustained by the court

Hannah Shook Sworn I recollect the time the old man Baker was Killed I was at David N. Bakers the night he was Killed I was there that night when he came home I heard him when he came into the house he knocked at the Door at least. I think he did I can't Say whether they were in the habit of fastening the Door or not I heard no Conversation between David and his wife I Slept in an adjoining Room I heard nothing of the old man being Killed that night I first learned it about 6 o clock in the Morning in Mrs Bakers Room it was on Friday night, I am intimately acquain

antied with Baker and his wife I was
teaching School There and made my home
at his house

Mrs David Baker Sworn for the Prisoner
Question when the Prisoner Came to your house
Soon after your Husband was Killed
what if any thing did he Say
which was objected to by States atty and
objection Sustained by the Court
Question did he come to your House very
Soon after your Husband was Killed
And State the Circumstances in relation to
his being Killed. Answer he did about 3/4
of an hour after my Son had been home
David Baker was Killed 1/2 Mile
Question did he Say what the Circumstances were
or who Killed him
objected to by States atty and objection
Sustained
David N. Baker. recalled. I did not See the
Blood when it got on my Shirt
Question What did you do with the Bottle
of whiskey
Answer I don't like to tell
unless I am paid for it
Stephen Butler went with me and I
showed him the Shirt
Amen A. Blenkinship called and Sworn for prisoner
Question do you know of David N. Baker and
his Father at or near the Spot. where the

32 ~~27~~

Old man was Killed at a time previous to this accurence

Objected to by States atty and Objection Sustained by the Court

Question do you Know of David N. Baker drawing a Knife on his Father and Threatning to Kill him at or near the Spot where the old man was Killed on a previous accession

Objected to by the counsel for the State And objection Sustained by the Court

The counsel for the Prisoner then asked leave to introduce in Evidence the Examination of the witnesses taken before Bap a justice of the peace which was granted by the Court by Consent of States atty

4th Sept. 1863

State vs Marshal } David N. Baker Sworn And Examined Sa. going from Bap. House to the home of David Baker Marshal Borrowed my Knife to cut a chew of Tobacco then went on a bout 3/4 of a mile by this time it was nearly Dark I heard a lick And Father Fell Said to me I am a dead man I Jumped off my Mare went round to help Father up Marshal turned on me And Said if you touch him I will Kill you both he Struck at me as I Started to run pursued me a bout 80 yds I went on home

33 To my Fathers house called James Hogan
and told him that Richard Marshal had Killed
Father Hogan Ben Hulsey and William Baker
Started back with me about half way
met the man I was riding without bridle
or saddle on after reaching the place where
I left Father we found him lying on his
back with his throat cut from Ear to Ear
there lay my Saddle and Bridle by his Side

Nov. 23d 1863

his
David x Baker
mark

Martha Goff

Testimony about the last
of August 1863 I heard Richard Marshal
say he would Kill Old man Baker and
and wash his hands in his hearts Blood

her
Martha x Goff
mark

Catharine Baker Testimony on the 4th Day
of September 1863 Richard Marshal came
to my House soon after my Son and others
had left to assist in Bringing the dead body
of my Husband Home and Stated that the
old man my Husband had said my Son
David had Killed him that he had got the
Blood on his hands and clothes by trying to
lift him up and when he found the old
Man was dead he run off and left him
did not know where he was going the first
place that he found himself was at the Cabin
in the Hollow. That when he left that he had

34 Some persons coming he said he thought they were Soldiers or Militia or the Boys. Stepped out of the way to keep them from seeing them

Testimony closed

And after the Argument of Counsel the Court charged the Jury as follows

I The Defendant is charged with Murder in the first Degree by having willfully deliberately and premeditatedly killed David Baker by cutting and stabing the said Baker with a knife. the word willfully as here used means intentional not accidental. The word deliberately means a cool state of the Blood that is not in the heat of passion caused by some reasonable and sufficient provocation The word Premeditatedly means thought of before hand any length of time however short.

II If you believe that the Deft. in malice did willfully or intentionally cut or stab and kill David Baker with a knife as discribed in the indictment and that he thought of stabing and killing any length of time however short. then Deft is guilty of murder in the first degree if the Prisoner inflicted the wounds upon the deceased without the specific intent to inflict upon him great Bodily harm and deceased came to his death in consequence of such wounds

~~III~~ 35 inflicted under such circumstances then the defendant is guilty of murder in the first degree and so the Jury should find

III Malice here mentioned means a condition of the mind and heart void of social duty and fully bent on mischief which condition is evidenced by former grudges antecedent thereto or menaces or premeditated schemes to do the act charged or any bodily harm to the deceased and if you find the deft cut and stabbed the deceased David Baker with a knife likely to produce death or great bodily harm the law presumes he stabbed and cut him in malice

IV Provocation be sufficient to mitigate or extenuate homicide as applicable to this case should amount to personal violence or injury to defendant mere words of reproach have abusive or grievous sorrow they may be are no provocation sufficient to free the party killing from murder

V The killing having been proved circumstantial evidence when so reasonably conclusive as to convince the minds of the jurors beyond a reasonable doubt is sufficient to convict of murder in the first degree

VII The Jury will entirely exclude from their consideration every statement or declaration

made by the prisoner in reference to the killing of David Baker made after that occurrence

VII If the Jury believe that any witness has testified falsely to any material matter to this issue they are at liberty if they think proper to disregard the whole evidence of such witness

VIII If the Jury have a reasonable doubt of the guilt they should give him the benefit of that doubt. And acquit him but such doubt does not mean a mere possibility of the prisoners innocence but a rational and substantial doubt touching his guilt

The counsel for the Prisoner Excepted to the charge of the court upon the ground it was calculated to mislead the Jury That it was illegal in instructing the Jury to disregard all the statements and declarations of the Prisoner made after the transaction

The counsel for the Prisoner asked the court to allow him to read to the Jury Marshals statement made before the examining Magistrate

which privilege was refused by the court To which decision the counsel Excepted

The Jury found a verdict of murder in the first degree John A. Emerson (Seal)

Judge

34

State of Missouri }
Washington County }

I the Undersigned Clerk of the Circuit Court in and for the County aforesaid do hereby Certify. That the foregoing Thirty Six Pages. Contains a True and perfect Transcript of the Record and proceedings had in the Case of the State of Missouri against Richard Marshall as the same remains of Record and on file in My Office

In Testimony Whereof I have hereunto Set My hand and affixed my official Seal at Office in the Town of Potosi this 21st day of June AD. 1864

Wm A Matthews Clerk

William A Matthews Clerk for for this Transcript. $21.07

In dex

Indictment	folio	1.
Plea Not Guilty	"	3.
Jury Sworn	"	3.
Verdict of Jury	"	4
Sentence Passed	"	4
Motion for New Trial and Overruled	"	5.
Bill of Exceptions		6

(52)

The State of Nebraska
vs
Richard Marshall

Appeal from Washington Circuit Court.

I, Barton Bates, one of the judges of the Supreme Court, having inspected the record in this case, and being of opinion that there is so much doubt as to the legal propriety of all the proceedings at the trial of the cause as to render it expedient to take the judgment of the Supreme Court thereon, do by this order expressly direct that the appeal herein granted shall operate as a stay of proceedings on the judgment.

Barton Bates
Judge

July 1st 1864.

Oct T. 1865
No. 37 (19)

State of Neb. Appl.
vs
Richard Marshall
Appellant
Appeal from Washington Cir. Ct.

Transcript
Filed July 1st 1864
A. M. Mead
Clerk

1864 November 17. Sub on Brief
1864 Dec 21 Submission set aside and re-argument ordered.
1865 Oct 26th. Submitted on briefs by parties
" Nov 20 Affirmed. D.P.

State of Missouri vs Richard Marshal } In the Supreme Court — Respondent's Brief.

1st. To the objections that there was no seal to the "Venire" issued by the Clerk to summon Jurors, And that no return thereon was made by the Sheriff; the State cites the following authorities — State vs Samuels 3 Mo R. p. 68 — 2 Vol Rev Mo. Statutes 1855 p. 910.

2d. Henry Beard was a competent Juror — furthermore his name does not appear on the record as one of the jurors who tried defendant — And no objections were taken to the ruling of the Court declaring him Competent — State vs Rose 32 Mo R p 346.

3d. The Court properly sustained the objections made by the State to the questions propounded by deft. to the witness David A. Baker as appears on pages 23 & 24 of the record; because the Answers of the witness might criminate him — And if answered in the affirmative could not possibly be any defence in this case — referring to acts of the witness disconnected with & distinct & different from the one for which defendant

respondent's Brief & Argument as
applied to the question of fault
or innocence of Defendant.

Respectfully Yours
S. Gullaire
Cont. Atty for Defd.

Supreme Court

State
vs
Richard Marshal

Respondent's Brief

S. Gullaire
~~for State~~ Pltff.

Filed Oct. 19th 1864
A. W. Mead Clerk

The State
vs
Richard Marshal

The venire facias issued by the Clerk directing and commanding the Sheriff to Summon a Jury should have been Sealed

The Sheriff should have made a return upon the writ of venire Facias

The Names of the Jurors should have been put in a Box and drawn and listed as they were drawn
See Rev. Statute 2d Vol. 915. 916

The Court Erred in Excluding the Evidence of David Baker when he was asked if he and his Father had Ever had any difficulty.

The Court Erred in Excluding the Evidence of David Baker when he was asked if he had Ever threatened to take his Fathers life -

The Court Erred in Excluding the Evidence of David Baker when

he was asked by the Counsel for the prisoner, did you and your Father have a fight on or near the Spot where he was killed at a previous time

The Court Erred in Excluding the Evidence of David Baker when he was asked by the Prisoners Counsel if he had not near the Spot where his Father was killed drawn a Knife upon his Father and threatened to kill him

The Court Erred in Excluding Portions of the Evidence of Mrs David N. Baker

The Court Erred in Excluding a portion of the Evidence of Vincent Blanchinship –

The Court Erred in refusing the Counsel for the Prisoner the Privilege of reading to the Jury the Examination of The Prisoner before Bass the Justice after having admitted the same in Evidence at bring a part of the Examination –

The Court below Erred in striking out from the Evidence the Examination of the Prisoner and keeping it from the Jury after having admitted the Same as it was a legitimate part of the Examination

The Court Erred in Excluding the Testimony of Charles L. Goff when he was asked by the prisoner if he knew of David N. Baker threatening his Fathers life -

The Court below Erred in Charging the Jury to Entirely Exclude from their Consideration any Statement or declaration made by the Prisoner in reference to the killing of David Baker. Made after that occurrence

8

The State
vs
Richard Marshal

Brief

Mr. Conger
atty for Deft.

Filed November 15. 1864
A. W. Mead
Clerk

State Respondent } Supreme Court
vs } Mo. October Term 1865
Richard Marshal Appellant } Respondents Brief -

In answer to Appellants objections I contend the law does not require an order of the Court on the Sheriff to be sealed. The Sheriff is bound to respect the order of the Court sealed or not sealed. The order sealed would not have been more effective. Each takes judicial notice of the official existence of the other - 2 Vol Mo Rev Stats Sec 2 p 910.

The Jury was substantially selected in accordance with the law. Sec 4 p 915 2 Vol Mo Stats.

Appellant waived all informalities, if any, in the empannelling of the Jury, by going to trial, without making exceptions thereto. "Objections to the officer returning a Jury should be taken before the trial commences & cannot be taken advantage of in arrest of Judgment" - of course not in motion for a new trial. Samuels v State 3 head note 3 Mo Reps p 168.

Objections to Appellants questions propounded to David N Baker, pp 23 & 24 were properly sustained - Evidence offered must correspond with the allegations & be confined to the point in issue. This rule excludes all evidence of collateral facts, or those which are incapable of affording any reasonable presumption or inference as to the principal fact or matter in dispute. 1 Glf p 61 Secs 51 & 52. Answers to the questions may have criminated David N Baker & if answered affirmatively would not have impeached him. It was an attempt to investigate a matter outside & independent of the case before the Court.

The Court did not err in sustaining objection to question asked of Mrs David N Baker p 31.

The State can prove declarations of deft but deft cannot prove them, when objection is made - To say otherwise is equivalent to holding deft qualified to testify in his own behalf without taking an oath to tell the truth - The statements desired were not made at time of arrest of deft ~~were not made at time of arrest of deft~~ + was not competent evidence. The proposition is so plain as to be axiomatic, that is, the Court below ruled properly -

The principle of the ruling of the Court upon question asked Vincent Blunkenship, pp 31 + 32, already considered.

The Court below after excluding testimony of witnesses taken before Bass, Justice of the Peace, from the consideration of the Jury did not err in refusing Counsel for Appelt (deft) the privelege of reading it, to the Jury - Consistency required it -

It was properly withdrawn from consideration of the Jury for it was improperly introduced + as its withdrawal did not legally injure deft he cannot complain - Improper testimony was introduced + afterwards withdrawn. The tendency of the testimony was to benefit deft + as its withdrawal was proper no injury was done him. It is unlike the case where illegal testimony, injurious to a deft is introduced + the Jury afterwards told to disregard it. The Court merely corrected an error of its own.

Had the State introduced the examination it would have been bound by it. The examination in this case is not evidence of any matters in issue - Oftentimes it is so. It was not offered to impeach Baker for his testimony before the Justice + Court coincides. It was offered for the purpose of getting before the Jury the statements of the deft to Mrs

David N Baker & was properly excluded

Other objections made by Appellt have been considered.
No objection is made to the instructions
The Court is respectfully asked to affirm the decision of the Circuit Court of Washington County in the above case —

L P Vastine
Cir Atty St Louis Co

45

State of Missouri
Res
vs
Richard Marshall
Ap

Respt's Brief

Filed Oct 25. 1865
J. A. Willis
Clk

State of Missouri, Resp.
vs.
Richard Marshall, Apl.

In Supreme Court, appeal from Washington County.

Briefs.

1st. The mode of selecting the jury was in direct violation of the letter and spirit of the law; the trial was therefore, illegal and void. — Rev. Stat. 1855, Page 915 and 916.

2d. The law requires that a full transcript of all the proceedings should be returned. Rev. Stat. 1855, Pg. 1205, Sec. 16 & 17. The record in this case does not show the date of sentence; of filing the motion for a New Trial; nor does it contain a copy of the motion, without which the court cannot say whether or not the Court below committed error in over rulling it.

3d. The witness, David N. Baker, not having objected to answer, for the reason that, "The answer would criminate himself," the Court improperly interferd in preventing the witness from answering the questions put by counsel for defendant. 1 Greenleaf, Sec. 451.

4th. The testimony offered by Chas. S.

goy, on page 30, and that of Vincent Blankenship, on page 31, offered by defendant, was legal testimony, as calculated to support a hypothesis different from that of the guilt of the defendant; and was, therefore, improperly overruled by the Court.

5th — The instructions given for the State are argumentative, insufficient in law, and tending to mislead the minds of the Jury. The instructions should charge the Jury that their belief must be founded upon the evidence in the cause.

6th — The sixth instruction given for the State is against the law. The Court permitted the introduction, as evidence, testimony of witnesses, — including that of the Defendant, — taken before Justice Bay, with the consent of the prosecutor; it, therefore, should not have been excluded; but left for the consideration of the Jury. They had a right to pass upon it.

7th — When any portion of the admissions of a prisoner are detailed to the Jury by the State, the defendant is en=

titled to give in evidence the whole statement. Roscoe's Crim. Ev. Pg 55. – Whart. Crim. Law, Pg. 188. and cases therein cited, and Pg. 173. [See Wm. C. Bakers Sent. Trans. Pg. 13.]

John T. Whitham
Atty. for Ap.

No. 45, October Term 1865.

C

Richard Marshall
apl.

vs.

Brief.

State of Mississippi
Resp.

John T. Witham,
Atty. for apl.

Filed Nov. 7th. 1865
J. A. Willis
Clerk

(4)

State of Mississippi
v. Res.
Richard Marshall
Apt.

On the Supreme Court.
Oct. T. 1865.

Opinion of the Court.

The defendant was indicted, tried, and convicted of murder in the first degree, and sentenced to the penitentiary; and an appeal was taken to this court. There was no motion in arrest of judgment. No motion for a new trial appears in the bill of exceptions. Some exceptions were taken during objections were made in the progress of the trial, without saving exceptions. Nevertheless, we have examined the whole record in order to see, if there were any error that would justify us in reversing the judgment.

He objects that the jury was not summoned in accordance with the provisions of the statute. There was no challenge to the array. No exceptions are saved to the ruling of the court on any part of the proceedings relating to the selection and empanelling of the jury. The juror, whose competency was objected to, was not called and sworn to sit on the panel. It was not necessary that the order of the court directing the Sheriff to summon jurors

shall be issued under the seal of the court. All these points are decided in Samuels v. State, (3 Mo. 68). The judgment of the lower court is, that the proceedings were correct, unless it be shown by the record that they were erroneous. (Walker v. Cathcart, 18 Mo. 256).

Questions were asked the witness David N. Baker, whether he had ever had a difficulty with his father, the deceased; whether he had not previously to his father's death, threatened to take his life; whether he had not previously struck his father and mother his house; whether he and his father had not fought at or near this same spot, at a previous time; and whether, at or near the same spot, at a previous time, he had not drawn a knife on his father, and threatened to kill him. To the first question the witness objected to answer, and his objection was sustained; and to the third question, the circuit attorney interposing, was also ruled out. These matters have no tendency to show any feeling of hostility on the part of the witness towards the prisoner, in which case they might have been admitted. They relate, in part, to another time and a different transaction, and to collateral facts which

were incapable of affording any reasonable presumption or inference as to the principal matter under investigation; and as such they were irrelevant. (1 Greenl. Ev. §52; §450). As tending to criminate himself, he was privileged to refuse to answer, and having declined to answer the first question of the series, it may fairly be taken that his refusal continued, though the circuit attorney interposed afterwards for his protection (1 Greenl. Ev. §451). The whole evidence was of such a character ~~on the whole~~ as satisfactorily to sustain the verdict of the jury, and we do not find any such error in these rulings as would justify a reversal of the judgment.

It is insisted that there was error in excluding from the jury by instruction the statement of the prisoner which was taken down by the examining magistrate, after it had been admitted at the instance of the defendant. This statement was not competent evidence, either for the State or for the prisoner, and there was no error in excluding it from the jury. (Green v. State, 13 Mo. 394). If it had been admitted for the State against the accused, and then excluded from the jury by instruc-

tion, there could have been some ground for the objection. (State v. Ellis, 15 Mo 153; State v. Wolf, 15 Mo. 168).

The instructions were excepted to on the ground that they tended to mislead the jury, and for the reason that they told the jury to disregard the statements of the prisoner, made after the transaction. Such declarations could not be evidence in his own favor. There was nothing in the instructions which could have misled the jury in any way prejudicial to the rights of the prisoner. They placed the whole matter fairly enough before the jury.

It appears by the record that a motion for a new trial was made and overruled, but the motion itself was not made a part of the bill of exceptions, nor does it appear in the record. We think proper, on this occasion, to state distinctly what we conceive to be the law on this subject, under existing statutes, as applicable both to civil and criminal cases. The adverse ruling practice in criminal cases declares that no assignment of error or joinder in error shall be necessary on an appeal or writ of error in a criminal case,

but that this court shall proceed upon the return thereof, without delay, to render judgment upon the record before them. (Rev. Stat. p. 1205, § 20). It provides nothing directly in relation to a motion for a new trial or in arrest of judgment. All such errors as appear upon the face of the record, or such as may be taken advantage of by a motion in arrest, or by a writ of error, will be noticed here as a matter of course; but as to exceptions taken in the progress of the trial, and as to motions for a new trial and in arrest, which can become a part of the record only by bill of exceptions, the same rules are to govern as in civil cases. The act concerning criminal practice expressly declares, that the provisions of law in civil cases relative to the attendance and testimony of witnesses, their examination, the administration of oaths and affirmations, and proceedings as to contempts, to enforce the rendition and protect the rights of parties, shall extend to criminal cases, as far as they are in their nature applicable thereto, subject to the provisions contained in any statute (Rev. Stat. 1838 p. 1191-2, § 18); and verdicts may be set aside, and new trials awarded, on the application of the defendant, and continuances

may be granted to either party, in criminal cases, for like causes and under the like circumstances, as in civil cases, (§19). And no exception can be taken, in an appeal or writ of error to this court, to any proceeding had in the progress of the trial in the court below, ~~and~~ which are such as natural that they do not appear on the face of the record, nor become a part of the record, ~~unless~~ without being made so by a bill of exceptions, unless they have been expressly decided by the court below (Rev. Stat. p. 1300, § 33); and in order that it may appear that such exceptions have been expressly decided by the court below, there should be a motion for a new trial, which should appear in the bill of exceptions as overruled, and an exception should be taken to the decision of the court thereon. And all motions for a new trial, or in arrest of judgment, must be made and filed, within four days after the trial, if the term so long continues, or if it does not, then before the term is ended. (Rev. Stat. 1833 p. 1286, § 6; Wilcoxin v. Hamberlin et al. 5 Mo. 248; Allen v. Brown, 5 Mo. 323; Field v. Cathcart, 8 Mo. 686; Haney v. Haney, 18 Mo. 466; Richmond's Adm. v. Wardlaw & Pogue (Oct. T. 1865).

The Code of Practice of 1849 wholly omitted the first and second sections of Art. VII. of the previous act concerning practice at law, which required motions for new trial and in arrest of judgment to be made within four days after the trial, and that they should be accompanied with a written specification of the reasons upon which they were founded (Rev. Stat. 1845 p. 829-30), and provided for a peculiar mode of trial and a special verdict, or a special finding of facts by the jury; and the third section of Art. XI. provided that a new trial might be granted in certain cases enumerated therein, but made no provision for a motion for a new trial otherwise, though it would appear by the third section of Art. ~~XXVI.~~ that such motions were contemplated by the act. (Laws of 1849, p. p. 87 & 100). The cases of Pine v. Rogers (15 Mo. 315), and Rogers v. Jacoby (26 Mo. 530), and Pine v. Cole (28 Mo. 478), and Gray v. Hesley (32 Mo. 243), were ~~apparently decided~~ based apparently upon the act of 1849, and upon the changes made since that time. By the practice act of 1883 (Rev. Stat. 1885 p. 1286, Art. XIII. 86) the first section of Art. VI. of the act of 1845 was restored, and the mode of trial was changed. With this change in the statutory provisions (which was not particularly noticed in the above cases),

the case of Pirtle v. Rogers ceases to have any application or authority in respect of the necessity of a motion for a new trial and the time within which it must be filed. But the second section of Art. VI. of the act of 1845, providing that "every such motion shall be accompanied with a written specification of the reasons upon which it is founded", was not re-enacted in the revision of 1855; and by force of the twentieth section of the act concerning Revised Laws, (Rev. Stat. 1855 p. 1026), it would seem to have been repealed, even if it were not previously repealed by the act of 1849. The result is, that while such motion must now be made and filed as formerly, it is no longer absolutely required that they shall contain a specific statement of the reasons on which they are founded: and this was all that was decided in Wagner v. Jacoby (24 Mo. 530) and in Perkins v. Bole and Gray v. Hines. The chief object of the motion could seem to be, that the attention of the court below may be expressly called to the exceptions that are taken, in a final review on motion for a new trial, or

ment. During the proper effect trial, there is not time for ~~deliberation~~ much consideration of the points that arise; but the motion affords an opportunity for a more careful examination and a more mature deliberation. And it would seem to be highly proper that the reasons and grounds of the motion should be stated therein, at least, in such general terms as would comprehend the exceptions which have been taken and noted in the trial. But the statute has not seen fit to require a written specification of the reasons. It must be taken that the intention of the act was, that when a motion is made within the time required, it shall be presumed that all exceptions, which have been duly taken and noted in the bill of exceptions, are properly decided by the court when the motion is overruled: but the exceptions must ~~be~~ distinctly appear in the bill of exceptions; otherwise they will not be reviewed in this court. Nor will any exceptions be noticed here,

where no motion for a new trial has been made, or (which is the same thing) where none is made and filed within the time prescribed by law. It may be presumed that when the court below is thus formally called upon to decide expressly, and upon deliberation, on the points raised during the progress of the trial, errors may be corrected and new trials awarded, in many cases, without the delay and expense that must attend an appeal to this court.

The judgment is affirmed; and the Circuit Court of Washington County is ordered to proceed with the execution of the sentence according to law.

Judge Wagner concurs. Judge Lovelace absent.

N. Holmes.

48

State
Res.
v.
Richard Marshall
appt.

Opinion

affirmed.

Richmond
v.
Mandlen

Filed Nov. 20. 1865
J. A. Willis
Clerk

Holmes.