IN THE

SUPREME COURT.

CHARLES BENNETT, Pl'ff in Error,

AGAINST

THE PEOPLE, Defendants in Error.

Brief and Points for People.

STATEMENT OF CASE.

a conviction for grand larceny, un-
to facts, but contested on technicali-

sed was charged with stealing from
Poor House of Cortland county, 649
hams on the night of the 12th of

nent was found at the March Ses-
nd the accused plead at the same
he March term, 1867, was arraign-

The indictment contained two counts. The first count laid the property in Alonzo W. Gates, the keeper of the County Poor House; and the second in the "County of Cortland."

After the accused had been arraigned *for trial* he asked the Court to direct the District Attorney to elect as to which count in the indictment he would try him upon, and after the people had rested their case as to which count he would ask for a conviction upon. The Court refused so to direct. (Folios 15 and 46.)

The accused interposed a challenge to the array, (folio 16,) and also to each individual juror, (folios 17 and 18.) Challenges overruled.

After the jury had been empanneled and sworn, a motion was made to quash the indictments, (folios 19, 20 and 21,) and renewed on other grounds after the people rested. (Fol. 47.)

District Attorney objected that it was too late, after plea of not guilty. Motion denied.

There were no exceptions to evidence. There were some exceptions to the charge.

POINTS.

Of the form of the Indictme

First—It was no objection to the
that it contained two counts varyi
ship of the property. Wharton s
cautious pleader will insert as ma
will be necessary to *provide for eve*
tingency in the evidence; and this

mits. Thus he *may vary the ownership of articles stolen in larceny*, of houses burned in arson, &c." (Wharton's American Crim. Law, 424.) There was therefore no error in refusing to direct an election *before any evidence was given.*

Nor was it error to refuse to direct an election as to which count a conviction would be claimed upon after the close of the evidence on the part of the people; for the object of different counts is as much to meet the proof on the defense as on the prosecution. Where the indictment contains charges connected with the same transaction varied in the different counts to meet the proof, the Court will not compel an election. (Wharton, vol. 1—416, 421, 422 and 423. Also, 1 Park. C. R., 154.) In the latter case the motion to compel an election was made after the prosecution closed.

SECOND—The material facts which it was claimed did not appear "on the *face* of the indictment," (folios 19, 20 and 21,) belong and appear in the *caption*, (folios 71 to 75,) and the caption being no part of the indictment, it was not necessary that it should accompany the same, *if it did not.* (Wharton, vol. 1—219 and 220.)

Of the Challenge to the Jurors.

FIRST—The challenges were not properly made. The challenge to the array (folio 16) of course amounted to nothing, as it was not for partiality or default of officer who made the re-

turn, and no distinct *ground* of challenge is made in the challenge to the polls. Defendant's counsel, "for reasons last above stated," makes the challenge, but gives no *ground* of challenge. (Folios 17 and 18.) The Court for this reason should have disregarded it. (Stout vs. the People, 4th Park, 71.)

SECOND—But admitting the challenge to have been properly made, and the *ground* of the challenge to the polls to have been the same as that to the array, it was not true. The jurors were not disqualified on the ground of "*interest*," but if at all, on the ground of bias.

THIRD—But the jurors were on no account disqualified. The people of the county had no pecuniary interest in the event of the trial. It can with equal force be said that jurors are disqualified in criminal actions, because the people are a party, and the jurors are a part of the people. Were residents of the county *disqualified*, where could the jury be obtained? Had the property belonged to the United States, where would the jury come from? In Coats vs. the People, (4th Parker, 662,) the keeper of the County Poor House was indicted for embezzling hams furnished, as the hams in question were for the support of the county poor, and no question was made as to qualifications of jurors, and, in the many indictments that have been tried for "feionies or misdemeanors committed in, upon, or with respect to the property of counties," it has not been decided or claimed that residents of the county were not proper jurymen.

(See Russel on Crimes, vol. 2, 102.) If, however, the dfeense were right in their claim that the propertydid not belong to the county, this chal lenge falls to the ground.

Of the Ownership of the Property.

The ownership of the property was properly laid.

FIRST—" Whenever a person has a special property in a thing or holds it in trust for another, or where one has the lawful possession and the other the title, the property may be laid in either. (Wharton's C. L., 1824.)

SECOND—The property was properly laid in Gates. He was keeper of the County Poor House, and as such " had the possession, custody and control of all such provisions as were furnished for the maintenance of the paupers." (Coats vs. The People, 4 Park., 675.) He purchased the property in question and it was in his custody till it was stolen. (Folios 37 and 38.) Also, see case folios 44, 45 and 46 as to Gates' full authority and control at the Poor House.

" It is sufficient if the goods are laid as the goods of the bailee or agent," (the People vs. Smith, 1st Park., 329,) or even servant. (Arch-

bold C. P., 364, note.) Gates was an *agent.* (4 Park., charge of Judge, 675.)

THIRD—If the property was correctly laid in Gates, it is immaterial whether it was correctly laid in the county or not. It seems, however, that this was the property of the county; their money paid for it, (folios 33 and 34,) and it was purchased to feed the county poor. In Coats vs. The People, before cited, the proof on the part of the People was that the hams "*belonged to the county.* (4 Parker, 669.)

Of the Exceptions to the Charge.

FIRST—There was no error in the Judge's charge, at folio 56, in relation to the character of the doubt, the benefit of which the defendant was entitled to. It was no more than saying that "such doubt must be actual and substantial," (Wharton's C. L., 707;) but if there was an error it was cured by the subsequent charge of the Judge *at the request of defendaut's counsel* at folio 64, where the Judge *without qualification* charged that the defendant is entitled to the benefit of reasonable doubts.

SECOND—At folio 62, the request in effect is to charge that if Bennett was accessory before or after the fact, he could not have been principal—an absurdity. The Court charged the true proposition. (Folio 63.)

THIRD—The accused requested the Court to charge that "In cases of felony, confessions are regarded as the *weakest* and most *suspicious* of all testimony," &c. (Folios 64 and 65.) This was a broad request and included all confessions judicial and non-judicial however freely or voluntarily made, or however full they might be, and is hardly consistent with the language of writers on criminal law.

Burrill says, "Confessions of guilt, when deliberately and voluntarily made, are justly regarded as constituting the *highest* and *most satisfactory* species of evidence that can be presented before a tribunal." (Burrill on Circumstantial Evidence, 495.) Archbold says, "A confession by the defendant, if obtained fairly and without holding out any inducement to him, is nearly the *strongest* evidence that can be given of the facts stated in such confession, and is abundantly sufficient of itself, without any confirmation, to warrant a verdict against him." (Archbold's Criminal Practice, vol. 1, 405, and Waterman's note to same, 406.) To the same effect may be quoted Wharton's C. L., 683, Russell on Crimes, vol. 2, 824, Phillipp's Evidence, vol. 1, 110.

The confessions in this case were "freely and voluntarily made by defendant without any inducement, promise or threat, and without being asked to make the same." (See case, folio 43.)

FOURTH—The other points of the charge excepted to were in relation to the ownership of the property, and have been fully considered. The charge in this respect at folios 55 and 56, is

merely an expression of opinion, and is not a valid ground of exception. (1 Parker, 340.)

CONCLUDING POINT.—The conviction should be in all respects affirmed. The prisoner had a fair trial on the merits and he was not *prejudiced* by the violation of any legal rules. Not a single exception was taken to the evidence, and the fact of his guilt and the justice of his conviction is undoubted. The exceptions in the case are purely technical. "In criminal trials, the presumption is in favor of the verdict. Unless the record affirmatively overthrows this presumption, the Court will not disturb the verdict, and it must do this in such a manner as to show that *manifest injustice and wrong have been done in the premises.*" (Archbold's C. P., vol. 1, 663,—Waterman's note.")

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