3/66. Explnd. in Walker v. State, 50/532-3. 8 S. W. 939.

## HOUSTON *vs.* THE STATE.

In an indictment for stealing a horse, it is not necessary to prove by direct evidence that the horse was of some value, but this may be sufficiently established by proof of facts from which the jury may infer it. As where the prisoner said he *borrowed the horse,* and again that *he stole it,* it might be inferred that the animal was of some value, as no one would borrow or steal a horse totally valueless. So, evidence that a witness went a hundred miles to hunt the horse after he was stolen, would tend to prove that he was of some value, as one would hardly go so far for a worthless horse. So, proof that the horse possessed the power of locomotion, and traveled a hundred miles and back again, would go to establish the fact he was of some value. These facts appearing, this court refuse to award a new trial on the ground that the value of the horse was not proven.

*Appeal from Sevier Circuit Court.*

Peter E. Houston was indicted in the Sevier Circuit Court, for horse stealing. There were two counts in the indictment; the first charged that the said Peter, on the 21st June, 1851, one bay horse, of the value of $75, the property of Benjamin H. Layne, did steal, take and ride away. The second count charged that the animal stolen was a *gelding.* He was tried on the plea of not guilty, found guilty, and his punishment fixed at five years in the penitentiary. He moved for a new trial, on the ground that the value of horse was not proven, the court overruled the motion, he excepted, set out the evidence and appealed.

There was no direct evidence introduced as to the value of the horse; the testimony from which the jury might have inferred that he was of some value, is stated in the opinion of this court.

S. H. HEMPSTEAD, for the appellant. Although it is not essential to establish the precise value of the property as laid in an indictment for larceny, yet it is believed to be a rule in criminal jurisprudence as universal as it is inflexible, that the property stolen must be proved to be of some value. 2 *Russ. on Cr.* 148.

*Stark. Crim. Pl.* 186, 187. *Com. Dig., title Indictment, G.* 3. 2 *Russ. on Cr.* 178. 2 *Leach* 680. *Roscoe Cr. Law* 633. 9 *Car. & P.* 349. 28 *Eng. C. L. Rep.* 149. 1 *Hale* 534. 1 *Ch. Cr. L.* 559. 4 *Bl. Com.* 232, 236.

CLENDENIN, *Att'y Gen.,* contra. The proof as to value of the property stolen, is matter of form, not substance, (*Arch. Cr. L.* 50, 101, 176,) and under the statute (*Dig. ch.* 52, *sec.* 98,) the judgment cannot be arrested or stayed for such defect.

Mr. Justice SCOTT delivered the opinion of the Court.

It is conceded in this case that it was not incumbent upon the State to establish the precise value of the horse in question, as laid in the indictment; but it is insisted that there is no evidence in the record to prove any value at all, and therefore the verdict and judgment are unsustained.

It is true that there is no evidence of value in express terms; but there certainly is evidence going to establish facts, on which the jury might have reasonably found the main fact of value by the common process of ascertaining one fact from the existence of another, so common in the ordinary affairs of human life. The accused declared that he had borrowed the horse, and also that he had stolen him. It would be out of the common course of human affairs, either for a man to borrow a horse that was totally valueless, or for a thief to encumber himself with such an animal. The circumstance that one witness got another to go with him on a trip of over one hundred miles "to hunt the horse," immediately after he was missing, was one in connexion with others, from which value was legitimately inferable. Men do not usually go off on such trips in general expensive) without some strong motive, and if the horse was of no value, they went on a bootless errand, both as to the horse and the supposed thief, who in that case had committed no larceny. And the like ground of inference for the jury is presented in the fact shown in evidence that the horse had traveled from Sevier county into Scott, a distance of about one hundred and thirty-six miles, and was trav-

eled back again into Sevier county, by the witnesses, the next morning after the capture of the accused.

Upon applying their knowledge and experience to these facts and circumstances, so shown in evidence, the jury, in their sphere unlimited by any boundaries but those of truth in the ascertainment of facts from evidence, might have well found the horse in question of some value, according to the convictions of their own understanding. And we think that some of the decisions of this court, as well as decisions elsewhere, warrant us in refusing to disturb the verdict and judgment.

In the case of *Walker v. The State,* (4 *Ark. R.* 89,) which was a larceny case, this court held that "the presumption is in favor of the verdict," and that, unless the record affirmatively overthrows this presumption in such a manner as to show that manifest wrong and injustice has been done, the verdict ought not to be disturbed.

In the gaming case of *Stevens v. The State,* (3 *Ark. R.* 66,) the objection was taken that the evidence in the record failed to show that the playing was for money or any valuable thing, but this court held that, as the evidence in that case showed "that the accused sat behind a table commonly called a faro table, dealing or drawing out cards from a box and using pieces of bone for carrying on the game—although no money was used, nor did the witness know whether he was playing for money or amusement—a conviction on this evidence should not be disturbed," because the jury had the right to infer, by applying to this evidence "their experience" and knowledge in the manner of conducting such games, that the checks were valuable or represented money.

In that case, like the case at bar, there was no evidence of value in express terms, but that essential ingredient in the offence proceeded for, was ascertained by the jury from the existence of other facts shown in evidence. So in the case of *John Cummings v. The Commonwealth,* (2 *Virginia Cases* 128,) in a prosecution for the larceny of a bank note, proof that the accused "passed it away as genuine," was held not only sufficient evidence of value, but of the other essential ingredient of the

offence, that the note was genuine, on objection taken to the testimony as insufficient to show these two essentials.

And if the jury in the case at bar believed from the testimony, as we think they were authorized to believe, that the accused dealt with the horse in question as a valuable horse, this case comes up in principle to the Virginia case.

We feel no difficulty in sustaining this verdict and judgment, especially as the necessity of showing the value of the stolen property does not exist to the same extent in this State, where, under our statute, the distinction between grand and petit larceny is not regarded as it is elsewhere.

Let the judgment be affirmed with costs.