HUBBARD *vs.* STATE.

In misdemeanors, there are no accessories: all persons concerned, if guilty at all, are principals.

Where the master is indicted for trespass on a sixteenth section, acts of a slave, done under such circumstances as warrant the inference that they were done by command or procurement of the master, may be given in evidence to establish the guilt of the master.

Although the entire evidence taken together may not be conclusive beyond question as to the guilt of defendant, yet, if it does not appear to be actually insufficient to support the verdict, a new trial will not be granted.

Appeal from the Hempstead Circuit Court.

This was an indictment against Thomas Hubbard, for trespass upon a sixteenth section, determined in the Hempstead Circuit Court, at the August term, 1848, before the Hon. GEORGE CONWAY, then one of the Circuit Judges.

There were two counts in the indictment: the first charged "That Thomas Hubbard, on the 3d day of January A. D. 1848, with force and arms, at &c., did unlawfully cut timber off the sixteenth section of land for the use of schools, in township eleven, &c., &c., contrary to the statute," &c. The second count charged that defendant unlawfully removed timber from said sixteenth section. Defendant was tried on the plea of not guilty, convicted, and fined $40.

Defendant moved for a new trial on the grounds that the verdict was contrary to law and evidence. He also moved in arrest of judgment on the grounds that the indictment did not allege that defendant did not reside upon said sixteenth section, and that the indictment was otherwise uncertain and bad. Both motions were overruled,, defendant excepted, and set out the evidence, which is stated in the opinion of this Court. Defendant appealed.

PIKE, for the appellant, contended that, though the master might be held responsible, *civiliter,* for the acts of his slave, he could not be prosecuted criminally for the offences of his slave unless they were committed by his order or procurement: and, in such case, the indictment must aver that the act was done, not by the master, but by his slave, with his knowledge, authority, or consent.

WATKINS, *Att. Gen.,* contra, cited *Anderson vs, The State,* 5 *Ark.* 445, to show that the indictment was sufficiently certain, and 1 *Chit. Crim. Law* 283, (*note a*). 3 *ib.* 678. *Arch. Cr. Pl.* 53, 105, to show that it was not necessary to negative a proviso or exception, not contained in the enacting clause of the statute, or not descriptive of the offence.

Mr. Justice SCOTT delivered the opinion of the Court.

It has been long well settled that, in misdemeanors, there can be no accessories, either before or after the fact, but all persons concerned therein, if guilty at all, are principals.

By act of the Legislature, approved 18th January, 1843, (*Digest, p.* 344, *secs.* 8, 9, 10,) to cut or remove any timber or stone off any sixteenth section of land reserved for the use of schools, is made a misdemeanor. The defendant was indicted under this statute, and, to establish the charge, the State proved that his slave cut on, and hauled one or more loads of wood from, a sixteenth section in the vicinity of his residence, and that the same was unloaded at his house. The same witness proved that the same slave had cut and hauled off the same land several other loads of wood. Another witness proved that a wagon and mule team of the defendant's, driven by a negro, loaded with freshly cut wood, passed out of a wood-road that lead through a portion of this land into the main road that lead to Washington, the defendant's residence, and that the wagon was driven to and the wood unloaded at the defendant's house. Other testimony identified the sixteenth section as that set out in the indictment.

Upon general principles, it would seem clear that every act of

a slave, done under such circumstances in proof as to make it the act of the master, would be admissible against the master to prove acts charged to have been done by him. Then, in this case, beyond the proof of the acts of the slave, it was necessary that there should have been additional testimony showing that those acts were done under such circumstances as to authorize a finding that they were done by the master's command or procurement. The facts in proof, that the slave was his; that the wood was hauled in his own wagon, by his own mule-team, and unloaded at his house, were legitimate grounds, both for the admissibility of the evidence and for the finding of the jury. And although the whole testimony taken together is not conclusive beyond question as to the guilt of the defendant, it does not seem to be actually insufficient to support the verdict and judgment.

Finding, then, no error in the Court in permitting incompetent evidence to go to the jury; and the record showing no misdirection of the jury; and, finding no defect in the indictment, the same being technically accurate as for a misdemeanor created by the 8th section of the act cited, we are unable to perceive that the questions raised by the counsel as to the construction of the 10th section of the act, are actually involved in this case. Let the judgment be affirmed.