

another set of harness being in the same stable, an old leather belt belonging to Marcil's harness was found on the rack of prisoner's cart, in front of his house. The same belt had once been used to tackle prisoner's horse to a hay cart load, the belt passing under the belly of the horse, and that load of hay was driven by the prisoner, but it was not proved that the prisoner had harnessed the horse or seen the belt on the horse. The prisoner had several men working for him on his farm, among whom one named Herbert Reith. No direct evidence was adduced to show that the prisoner knew that the said goods and chattels were on his premises, but when Constable Contant first told him that he had a search warrant to search for the said goods and chattels on his premises, prisoner denying he had these articles, immediately made a wink to his servant man Reith. This wink so struck Contant that he was satisfied the goods were there, and immediately gave prisoner in charge to his assistant, and proceeded to make his search.

"Contant went to the stable, where he found some of the articles claimed by Marcil, and coming back to the house was informed by a party on the road, that Marcil's saddle and horse collar had been thrown out of the cellar of prisoner's house, whilst he, Contant, was at the stable. Contant effectually (*sic*) found these articles behind the house, concealed in the wild grass (*herbe St. Jean*).

"The person then and there pointed out to Contant as having thrown out of the cellar the said saddle and horse collar, was the servant man Reith; and Contant says he has no doubt it was Reith who threw out said articles, though he could not name the party who saw it done, and who gave him the information, nor was that party examined as a witness for the Crown. Immediately this saddle and horse collar were seen coming out of the cellar, search was made in the cellar, and Marcil's shovels, pincers and wrench were found concealed between the floor and the top of the foundation wall.

"When these last articles were so found, Contant said to prisoner, that he should have told at once about them, and thereupon the prisoner said: 'I had no business to tell you anything.'

"At the close of the evidence for the prosecution, the prisoner's counsel submitted that

there was no case to go to the Jury; but I decided that there was; and the case was left for the consideration of the Jury, who found the prisoner *guilty*.

"On the day fixed for pronouncing of sentence, the prisoner's counsel moved that the said conviction be quashed:

"1st. Because no legal proof had been produced to support the said indictment, and the case should not have been allowed to go to the Jury.

"2nd. Because the mere fact of stolen goods being found in the possession of prisoner does not support the charge of receiving.

"3rd. Because if prisoner were guilty of any crime upon the evidence produced, it was the crime of stealing and not of receiving.

"I was of opinion that there was evidence to support the verdict, and dismissed said motion, but at the request of prisoner's counsel, I granted a reserved case upon the following questions:

"1. Whether upon the facts proven on behalf of the prosecution, the case should have been allowed to go to the Jury.

"2. Did these facts support the indictment as drawn?

"And I postponed the judgment until the said questions are decided, and re-committed the prisoner to gaol."

Montreal, December 17, 1879.

M. C. DESNOYERS,  
Judge of Sessions."

RAMSAY, J. This is a case reserved by the Judge of Sessions at Montreal.

The prisoner was indicted for feloniously receiving stolen goods. There was no count for larceny. The evidence of the larceny was to the following effect:

(His Honor read evidence above.)

On the part of the prisoner it was moved, that there was no case to go to the jury. The judge of sessions left the case with the jury, and the prisoner being convicted, he reserved the two following questions for the consideration of this court: 1st. Whether, upon the facts proved on behalf of the prosecution, the case should have been allowed to go to the jury. 2nd. Whether the facts proved support the indictment as drawn.

It was argued at the bar that the finding of stolen articles on the premises of the accused, in a place open to others, and found there in