

STATE v. MESSENGER.

An indictment, containing in one count so much of the language of two sections of the statute of embezzlement as to leave it uncertain which of two different crimes of embezzlement is charged, is insufficient.

INDICTMENT, for embezzlement, containing in one count so much of the language of *ss. 7 and 8 of c. 257, Gen. St.*, that it is uncertain which of those sections the defendant is accused of violating. Motion to quash reserved.

Woodward, for the defendant.

Healey, solicitor, for the state.

DOE, C. J. The crime and penalty of the seventh section are different from those of the eighth. The indictment, not informing the defendant which crime he is charged with, is bad for uncertainty.

Indictment quashed.

FOSTER, J., did not sit.

 FLAGG v. PIERCE.

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A conveyance of real estate, duly executed and recorded, but fraudulent as to creditors, is not a substitute for a change of possession of personal property, conveyed by bill of sale, executed, at the same time.

TROVER, for a pair of oxen. The defendant justified under the levy of an execution against one Fox, through whom the plaintiff claimed. Facts found by the court.

Fox conveyed to the plaintiff a farm, by a recorded deed, and certain personal property, including the oxen, and took in return a bond conditioned for the support of himself and wife during life, and a mortgage on the farm to secure the bond. He was then living on the farm, and has continued to live there since. The oxen remained on the farm until taken by the defendant on execution. There was no change in the management of the farm or the personal property after the conveyance. The execution on which the defendant took the oxen was issued on a judgment founded on a debt due from Fox when the conveyance was made.

Woodward & Wellington, for the plaintiff.