2. It was not error to refuse a request to charge on a question that had been fully covered by the charge that was given.

Appeal from district court, Dallas county; Charles F. Clint, Judge.

John Ray appeals from a conviction of horse theft. Affirmed.

R. M. Clark, for appellant. Mann Trice, for the State.

DAVIDSON, J. Appellant was convicted of the theft of a horse alleged to be the property of O. H. Wilson. The horse was taken in Dallas county, and sold by appellant in Forney (Kaufman county), to the postmaster, Adams. On the trial, appellant claimed and testified that he bought the horse from Charley Denton. Denton was placed upon the stand, and denied selling the horse to appellant, and further denied having any connection with the horse. The state also proved by Constable Bane that defendant told him, after being properly warned, while under arrest, that he bought the horse from a man named Johnson. There is a good deal of testimony in the record, but this is a sufficient statement of the case for the purpose of decision.

The court charged the jury, in regard to appellant's explanation of his possession, in accordance with the rule laid down in Wheeler v. State, 34 Tex. Cr. R. 350, 30 S. W. 913. On several occasions we have sustained this character of charge, and see no reason for changing the views therein expressed.

Appellant also requested a charge in this connection as follows: "If you find from the evidence that the defendant took the animal mentioned in the indictment, and you further find that, the first time his right to the said animal was called in question, he gave an explanation of such possession, and such explanation was reasonable, then you are instructed that it devolves upon the state to prove the explanation false," etc. The court properly refused to give this instruction; for, in the first place, if the defendant took the horse, his explanation could not be reasonable, because that explanation was that he bought it from Denton, or, as stated to the officer, from Johnson. Neither one of these explanations could have explained the defendant's possession compatible with his innocence, if the assumption in the charge is true,—that the appellant took the animal. But, if the charge had been couched in appropriate language, the court did not err in refusing it, because he had already given a charge covering the question fully.

The other questions suggested for consideration have been decided adversely to appellant in case No. 1,733, just decided (Ray v. State, 43 S. W. 77). The evidence fully justifies the conviction, and the judgment is affirmed.

HURT, P. J., absent.

(38 Tex. Cr. R. 364.)

JONES v. STATE.

(Court of Criminal Appeals of Texas. Nov. 24, 1897.)

BAIL—LIBEL — INDICTMENT — SUFFICIENCY — EVIDENCE.

1. A recognizance reciting that defendant stands charged with the offense of libel is sufficient without setting out the constituent elements of the offense.

2. An indictment for libel alleged that defendant published a libelous article against one L. and others, who were then conductors, employed by a certain city railroad. The libelous article charged that the conductors of the city railroad, as a class, were foul characters, but did not mention any conductor by name. *Held*, that it was properly alleged to affect the reputation of any one or more of the conductors of said railroad.

3. An indictment for libel in publishing that one of the conductors of a certain railroad caused a lady to be thrown to the ground while alighting from a street car, and imputing to all the conductors of such road disgraceful acts, the nature and consequence of which were to bring them into contempt, and which attributed to said conductors infamous characters, was sustained on proof of any of the allegations.

4. Where the statement in a publication was so plain and unmistakable that no intelligent person could fail to understand what was intended by it, no innuendoes were required in the indictment.

Appeal from district court, Galveston county: E. D. Cavin, Judge.

W. L. Jones was convicted of libel, and appeals. Affirmed.

Wilford H. Smith, for appellant. Mann Trice, for the State.

DAVIDSON, J. Appellant was convicted of libel. The assistant attorney general moves to dismiss the appeal, because the recognizance fails to recite an offense known to the law. Said recognizance recites that the defendant "stands charged with the offense of libel." This is the only recitation in said obligation of the offense. None of the constituent elements are set out or attempted to be set out. We think that the recognizance is sufficient. Libel is defined to be an offense by the statutes, and is an offense eo nomine, as theft, murder, slander, etc. The motion to dismiss the appeal is overruled.

Appellant filed his motion in arrest of judgment, because the indictment is fatally defective, in that the published statement alleged to be libelous fails to convey the idea that the persons referred to had been guilty of a penal offense; or that they had been guilty of some act or omission which, though not penal, was disgraceful to them as members of society, the natural consequence of which was to bring them into contempt among honorable persons; or that they had some moral vice, or physical or mental defect or disease, which rendered them unfit for intercourse with respectable society, and such as would cause them to be generally avoided; or that they were notoriously of bad or infamous character. His second contention is that the printed and published matter could be held to

refer to but one person, to wit, the conductor causing the injury to a colored woman on East Avenue L car, and the indictment fails to designate by name who that conductor was; and he generally urges that the published matter is not libelous. Omitting the formal parts of the indictment, it charges that "defendant and W. H. Noble, on the 14th of November, 1896, in the county of Galveston, in the state of Texas, with force and arms, then and there, with intent to injure A. S. Spurgeon" and others, setting them out by name, "did unlawfully and maliciously make, write, print, publish, sell, and circulate a malicious statement of and concerning the said A. S. Spurgeon" and others mentioned, "and affecting the reputation of the said A. S. Spurgeon" and others mentioned, "who were then and there conductors employed by the Galveston City Railroad Company, on the various lines in the city of Galveston, Tex., which malicious statement was of the tenor following, to wit: 'Irish Snides. It is really disgusting, to say the least, for one to take notice and see how the Irish snides employed by the street-car company (meaning the Galveston City Railroad Company) as conductors on the various lines of this city (meaning the city of Galveston) discriminate. With a few exceptions, these cowboys, escaped lunatics, and imported lords have a way of their own, and discriminate with a vim. These whelps seem to forget that they are public servants, and treat our best colored ladies with a contempt that could only be found in a Yale chump. Some few nights ago, a colored lady, while dismounting from an East L car, was thrown to the ground by the mangy ape that poses as conductor ringing the bell before she was off the step. And the lousy little puppy, that scarcely speaks English, said to a white gentleman, that spoke of the danger of such proceedings, that she was a 'she coon.' Has it come to this? Such pimps (meaning one who provides the means and opportunities for libidinous gratification; that is to say, a procurer for the lusts of others) as this, men so low that they would willingly sell the virtue of their sister for a drink, the descendants of Oscar Wilde (meaning that they commit the crime of sodomy), greasy curs, foul-smelling scavengers, are imported to this country to insult and humiliate the people that help to make these enterprises,—that build up and support these public affairs. We coons! Some of the best families of America have raised coons. I expect that foreign whelp is a coon, but the woman in question is a colored lady. Perhaps I am a coon, but I would not give one drop of my "cooney" blood for a barrel of the "blud" of such "bludy" Irish snides. It's time that the car company should right these wrongs, and employ only respectable, intelligent men, that will do justice to all alike. We pay a nickle, and we demand a nickle's worth. There is too many intelligent men in this country to import such beastly bastards to insult the people here.'" It will be seen by this indictment that all of the parties named in the alleged libelous matter are alleged to be conductors of the Galveston City Railroad Company.

Taking appellant's grounds of his motion out of the order in which he places them, we notice that ground of said motion first which alleges the indictment is insufficient, because it only refers to one conductor causing the injury to a colored woman, etc., and fails to designate by name that conductor. By reference to the libelous matter published, it will be seen that the first sentence in said publication refers to the conductors on the various street cars of this city (meaning the city of Galveston) as a class. The libelous matter makes no exception among the conductors, but includes all of them. This has been held sufficient, without designating the names; and we hold this to be sufficient designation of every conductor in the service of said railroad company at the time of said publication. It therefore would be a violation of our statute to libel any sect, company, or class of men without naming any person in particular who may belong to said class. See 13 Am. & Eng. Enc. Law, p. 499, and notes; 2 McClain, Cr. Law, § 1044.

In reply to appellant's contention that the indictment fails to charge said conductors, either directly or by innuendo, with an offense against the laws, or with some act or omission, which, though not a penal offense, is disgraceful to said conductors as members of society, or the natural consequence of which is to bring them into contempt among honorable persons, or that they have some moral vice or physical or mental defect or disease which renders them unfit for intercourse with respectable society, and such as would cause them to be generally avoided, or that they are of notoriously bad or infamous character, we have this to say: That the first allegation in the indictment, to wit, that one of those conductors caused a colored lady to be thrown to the ground while dismounting from a street car, imputed an assault to one of said conductors, belonging to the class charged in the indictment, but does not name him. But concede that we should be in error as to the effect of this allegation; unquestionably the charge that said conductors were pimps, with the innuendo following the same, is such a charge as imputed some act, which, though not a penal offense, was disgraceful to said conductors as members of society, and the natural consequence of which was to bring them into contempt among honorable persons. So, of that portion of said publication which charged that said conductors were so low that they would willingly sell the virtue of their sister for a drink. These charges attributed to said conductors that they were of notoriously bad or infamous character; and, as the prosecution in this case was under all of said allegations, if the proof sustained any one, it was sufficient. It will be further noticed by reference to the allegations in the indictment

that there are innuendo averments contained therein, sufficiently explanatory of said statements in said publication. But, if there had not been, we hold that they were sufficient in and of themselves to constitute libel without innuendoes. The statements in the publication were so plain and unmistakable in their meaning that no intelligent person could fail to understand and comprehend what was intended by them. More v. Bennett, 48 N. Y. 472; 2 McClain, Cr. Law, § 1043, and authorities cited in note 2.

In regard to the remaining question, that the publication is not libelous, under the views herein expressed, it will be seen that such contention is without merit. We think the indictment is sufficient, and the judgment is affirmed.

(38 Tex. Cr. R. 368.)

NOBLE v. STATE.

(Court of Criminal Appeals of Texas. Nov. 24, 1897.)

LIBEL—MANAGER OF PAPER—WRITER OF ARTICLE.

In a criminal prosecution for libel, it was immaterial whether defendant was responsible for the publication of the article in question, on account of the fact that he was the financial manager of the paper in which it was published, where it appeared that he had admitted the writing of such article.

Appeal from district court, Galveston county; E. D. Cavin, Judge.

W. H. Noble was convicted of libel, and appeals. Affirmed.

Wilford H. Smith, for appellant. Mann Trice, for the State.

DAVIDSON, J. Appellant was convicted of libel. This is a companion case to Jones v. State (just decided) 43 S. W. 78. The questions on the indictment are the same in this case as in that, and upon that authority the indictment is held sufficient.

The only other question that requires consideration is whether or not appellant is guilty of the publication. In regard to defendant's connection with the publication of said article, it is shown that he was the business manager of said paper, and admitted writing the article in question; and it is a disputed fact whether he was in the city of Galveston at the time of its publication,—he claiming, and adducing evidence to show, that he was in the city of Dallas at that time. The defendant testified that he did not write the article, and did not cause it to be published, and that his only connection with the paper, as its business manager, consisted in the fact that he solicited advertisements and other financial business going to build up said paper, and for which he received a percentage. It is not necessary, in the view we take of the case, to discuss the question of his responsibility on account of the fact that he was financial manager of the paper, because the evidence for the state shows that he admitted writing the article. While he denied this, still it was a fact for the jury. They were the judges of the credibility of the witnesses who testified pro and con in regard to this matter, and the jury decided the question adversely to him. If he wrote the article, as he admitted to the witness who testified to that fact, he would be responsible, under the facts of this case. With reference to the remarks of counsel for the state in the closing argument, which were excepted to by appellant's counsel,—appellant having taken the stand as a witness on his own behalf,—we think the inference or deduction drawn by counsel for the state was legitimate. The judgment is affirmed.

(38 Tex. Cr. R. 372.)

FOSTER et al. v. STATE.

(Court of Criminal Appeals of Texas. Nov. 24, 1897.)

RECOGNIZANCES—RELEASE OF SURETIES.

Code Cr. Proc. 1895, art. 498, providing that "when a defendant who has been arrested for a felony under a capias has previously given bail to answer said charge, his sureties shall be released by such arrest, and he shall be required to give new bail," does not apply where the second arrest is under a second indictment, though such indictment be based on the same transaction as the first.

Appeal from district court, Harrison county; W. J. Graham, Judge.

A judgment was entered in favor of the state against A. T. Foster and others on a forfeited recognizance, and defendants appeal. Affirmed.

Chas. E. Carter, for appellants. John B. Carter, Dist. Atty., and Mann Trice, for the State.

DAVIDSON, J. This is an appeal from a judgment final upon a forfeited recognizance, and appellants are the sureties. Their principal was indicted for theft of hogs. In answer to the scire facias, among other things, it is set up in their answer that defendant was arrested upon a capias issued from the same district court upon a second indictment, charging the same offense, and that they were thereby released from the first obligation. Both indictments were still pending. In the first indictment there was but one count, charging theft of hogs. In the second indictment there are several counts, two of which charged theft of hogs. In the first count in the second indictment the ownership is alleged substantially as in the first indictment. The second count of the second indictment charges ownership in a different party. There are then several other counts in the second indictment charging receiving and concealing the hogs, knowing them to be stolen.

Article 498 of the Code of Criminal Procedure of 1895 provides, "When a defendant who has been arrested for a felony, under a capias, has previously given bail to answer said charge, his sureties shall be released by such