

13538

No. _____

Supreme Court of Illinois

People

vs.

Wilson.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 18.

PEOPLE'S CAUSES.

People

12528

IN THE SUPREME COURT,

APRIL TERM, A. D. 1861.

FRANCIS M. WILSON,
Plaintiff in Error,
ADS.
THE PEOPLE OF THE STATE OF ILLINOIS,
Defendants in Error.

} *Writ of Error to*
Iroquois.

This was an action of Bastardy, tried at the November term, A. D. 1860, of the Iroquois Circuit Court.

November 5th, 1860. Affidavit filed in the Circuit Court.

Rec. p. 2 STATE OF ILLINOIS, } ss.
Iroquois County.

The complaint of Lucy Francis, of said County, an unmarried woman, made before William F. Keady, Esq., one of the Justices of the Peace in and for said County, under oath, who says, that on the 19th day of last July, A. D. 1860, at the residence of Curtis Orms, in Ash Grove, in the County aforesaid, she was delivered of a female bastard child, and that Francis Wilson, of Ash Grove, in said County, is the father of the said child.

3 Justice's warrant, in usual form.

4 Appeal bond from the Justice, in the usual form.

6 Justice's transcript, certified to the Circuit Court, showing that the defendant was bound over to answer the charge.

8 James Fletcher appointed State's Attorney to prosecute this case, November 22d, 1860.

Issue made of whether Francis Wilson is the father of a female
bastard child of which Lucy Francis was delivered, on 19th day of
10 July, 1860.

Defendant pleads not guilty.

Trial by jury. Verdict, that they find the defendant guilty.

11 Motion for a new trial.

12 Motion for new trial overruled, November 30th, 1860. Defendant
excepted.

13 Judgment of the Court, that Francis Wilson do pay the sum of fifty
dollars yearly, for seven years, for the support and maintenance of the
said bastard child of the said Lucy Francis, together with costs.

Order to defendant to file bond in the sum of \$800, with County
Judge, with James Wilson as security, conditioned for payment of judg-
ment. Thirty days allowed to file bill of exceptions.

14 December 1st, 1860. Bond filed and approved; defendant dis-
charged. December 27th, 1860, bill of exceptions filed.

15 BILL OF EXCEPTIONS.

Shows that Lucy Francis was sworn, and testified that she was an
unmarried woman, and gave birth to a female child 19th July, 1860.
That Francis Wilson was the father of it. Had been in Ash Grove
about four years. Stopped first at home, at Curtis Orms'; then went to
16 Wilson's about a year; then to Mr. Willoughby's, and resided two weeks;
then went a second time to Mr. Wilson's, and resided about two years;
then, May 1st, 1859, went to Mr. Harvey's, and resided five months;
then went direct to Mr. Wilson's again. Did house work at Harvey's;
his wife was not living. Last fall first had intercourse with a man. It
was with Francis Wilson. He is sixteen years old. He told me he
would marry me. I didn't let him have intercourse the first time he
17 asked me. He asked me half a dozen times, probably.

18-20 Details six times that she was solicited before intercourse occurred
in the dining room. I stated to no person but my mother, for four days
after the child was born, whose child it was. I did not within six days,
nor any other time. I signed a paper within six days after, saying that
it was not Francis Wilson's child. I did state to John B. Clark that the
child was not Francis Wilson's; it was within four days I stated that.

22 I never told Edward Wilson, under the promise of privacy, that the child was Wesley Harvey's; I never told him any such thing. I never told him that just before I left Mr. Harvey's, he came and got into bed with me.

23 The plaintiff then proposed to re-examine the witness as to whether intercourse took place subsequent to the time about which she had been examined. Defendant objected. Objection overruled, and defendant excepted. Witness then stated that defendant had had intercourse some half a dozen times, and that Francis had threatened to penitentiary her in case she did not clear him of the charge. Francis didn't state that
24 there was a rumor around that he was the father of the child, and that if I swore to a lie it would penitentiary me. Francis said that there was a report that he was the father of the child. And he also said if I swore false it would penitentiary me.

25 Details subsequent interviews, and all in the dining room. Was sure that Mrs. Wilson did not occupy the lounge there.

26 Nancy Orms sworn, and testified that the child was born 19th July, 1860. She was at Harvey's from the first of May, 1859, till the 2d of October after; then went to Wilson's, and staid till July 15th, 1860.

27 Melissa Francis testified to Francis telling Lucy that she was a nice girl, and threatened to penitentiary her if she did not clear him. Did not hear distinctly all that was said. Harvey came two days after the child was born, and wanted to know if Lucy swore the child on to him. He came again in about a week and a half.

29 John B. Clark sworn on the part of the defendant. I went to Mr. Orms' house some time in July last. Edward Wilson went with me. I had an affidavit written out, exonerating Francis Wilson from being the father of the child. She said she was willing to sign the affidavit and be qualified to it. She signed it and I qualified her to it:

STATE OF ILLINOIS, }
Iroquois County. } ss.

Before me, John B. Clark, a Justice of the Peace, personally came Lucy Francis, who being by me duly sworn, deposeth and saith, that the child of which she was lately delivered does not belong to Francis M. Wilson.

30 Signed and sworn to July 24th, 1860.

She seemed calm and quiet. She had some conversation with Mr. Edward Wilson. He told her that he was friendly to her, and if his brother was guilty he did not wish her to exculpate him. She signed the affidavit voluntarily, and I swore her to it.

John H. Stidham testified that he visited Lucy Francis, and that he cautioned her as to what she might talk about the matter, and advised her to send for the father of the child, and settle with him privately. She then told me it was not Frank's child, and that she never said it was. Edward Wilson said, since you have cleared Frank, would you have any objection if we brought Squire Clark here and have him take your affidavit to that effect. She said "No." She understood herself at the time, and had the possession of her faculties, if I am any judge.

Edward Wilson and I went out and left Francis in with Lucy awhile, and I think this conversation occurred after we went in.

Edward Wilson testified to about the same as Esq. Stidham, and then goes on to say, that after Stidham had left, he had a long conversation with Lucy, and she told him that the child was Wesley Harvey's. Mrs. Orm told Lucy the next day that she didn't want any more of her lying. I told her not to sign the affidavit unless it was true. My mother occupied the dining room from the sixth or eighth of October till about the 20th of that month.

Wesley Harvey swore that he never had had sexual intercourse with Lucy Francis.

Bill of exceptions contains all the evidence.

The Court gave the following instruction for the People:

That if the jury believe from the evidence that the People have proven the child of Lucy Francis to be the child of Francis Wilson, and that the defendant, Francis, has failed to show by evidence that such is not the fact, then the law is for the plaintiff, the People.

To the giving of which instruction the defendant excepted.

The Court refused to give the following instruction, to which the defendant excepted:

The jury are further instructed, that the defendant is not bound to prove that Wesley Harvey, or anybody else, is the father of the child, and if the jury believe from the evidence that Francis Wilson had sexual intercourse with Lucy Francis, and also that any other person had sexual intercourse with her, within the period of the duration of pregnancy immediately prior to her delivery, then they must be satisfied beyond a reasonable doubt that the evidence for the prosecution excludes the probability of that other person being the real father of the child, else the law is for the defendant.

41 Affidavit of defendant, showing that he can prove by his mother,
42 who occupied the dining room at the time the girl swore intercourse took
place, she being then sick there, that it could not possibly have been
done. And that he could not foresee that the girl would have sworn so
as to render this testimony necessary.

44 Affidavit of juror, Daniel Lawrence, that the Court sent two or three
messages to them in relation to their duty, the last one of which was,
45 "That a verdict of the jury to disagree would not be accepted by the
Court," and then added, "that the jury would have to be all agreed
before they could give in a verdict and be discharged;" which induced
affiant to agree to a verdict against his conscience, and supposing he was
complying with a legal requirement of the Court, else he would not have
done so.

47 Affidavit of Westbrook does not controvert affidavit of Lawrence.

48 Defendant excepts to overruling motion for a new trial.

ERRORS ASSIGNED.

The Court erred in allowing the prosecuting witness to examine to
new matter.

The Court erred in making the giving of the bond part of the
judgment of the Court.

The verdict is against the evidence.

The verdict and judgment are contrary to law.

The jury were unlawfully tampered with by messages from the Court.

The Court erred in overruling motion for a new trial on affidavit
of new discovered evidence.

The Court erred in granting the 4th instruction for the People.

The Court erred in refusing the 4th instruction for defendant.

The Court erred in overruling motion for a new trial, and rendering
judgment against the defendant.

^{9 P. D.}
Francis M. Wilson
Pltff. in Error
vs

The People

Abstracts

Filed Apr. 25-1861

G. Ireland
Clerk

IN THE SUPREME COURT.

FRANCIS M. WILSON,
Plaintiff in Error,

ads.

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Errors.

POINTS OF PLAINTIFF IN ERROR.

1st. The court erred in allowing The People, in re-examination, to permit the prosecuting witness to detail new instances of intercourse with the defendant.

"On the primary examination of the witness, or, as it is generally called, his examination in chief, you are bound at your peril to ask all material questions in the first instance; and if you omit this, it cannot be done in reply. No new question can be put in reply unconnected with the subject of the cross-examination, and which does not tend to explain it.

Second Ed. Philips' Evidence, page 711.

Note 500, Cowen & Hills Notes. — 4th Ed 2nd vol
1 Starkie's Evidence, 150. Page 878 note 570

This rule is adhered to with the greatest strictness in criminal cases.

Rex vs. Beezley, 4 Car. & Payne, 218. 370

Rex vs. Stimpson, 2 Car. & Payne, 415.

1 Peters' Cir. Court Rep., 85, 89.

3 Washington Cir. Court Rep., 85, S. C.

2nd. The court erred in making the giving of the bond part of the judgment of the court.

The Bastardy Statute, Sec. 5, provides that the court, if the defendant be found guilty, may give judgment against him for not exceeding fifty dollars a year, and for the costs. The bond is a separate matter.

3rd. The verdict is against the evidence. The prosecutrix not only contradicted herself from beginning to end, but has sworn to two affidavits diametrically opposed to each other.

4th. The jury were unlawfully tampered with by messages from the court.

Affidavits of a juror are allowable where they show a misdirection by the court. It was so understood in *Sargent vs. —*, 5 Cowen, 122, and *ex parte Caykendall*, 6 Cowen, 53.

The affidavit of the juror Lawrence, shows that they were misled by a message from the court sent to them, which is vastly more reprehensible than a misdirection in court could be.

In *Guykowski vs. The People*, 1 Scam., 476, the affidavit of the juror was admitted to prove himself an alien. It could never be known in a majority of instances that a jury were tampered with, if they were not allowed to state the fact.

But aside from the affidavit of the juror, the affidavit of the officer Westbrook, shows clearly that the thing was done, and it is morally certain that the jury never would have convicted the defendant had they not been wrongly instructed out of court in violation of law.

If the Judge, who sits on a trial, can send word to the jury what they must do, then no man is safe.

Crabtree vs. Hagerbough, 23 Ill., 349.

Fisher vs. The People, 23 Ill., 295.

Knight vs. Sargent 13 Mass. 215
Sargent vs. Roberts 1 Pick. 887

5th. The affidavit of the defendant for a new trial brings him within the law, and a new trial should have been granted.

Mulford vs. Shepard, 1 Scammon, 583.

Schlenker vs. Risley, 3 Scam., 486.

Crozier vs. Cooper, 14 Ill., 141.

6th. The fourth instruction for The People is bad, because it requires the defendant to prove a negative absolutely, whereas he is only required to raise a reasonable doubt of his guilt by the evidence.

Pate vs. The People 3 Gilman. 662

7th. The fourth instruction for the defendant should have been given. If it be probable, upon the evidence, that some other person was the real father of the child, the defendant ought not to have been convicted. And that that fact *was not* probable the jury ought to have been satisfied beyond a reasonable doubt, and hence the instruction was wrongly refused.

Sth. The facts made out in this case, and the exceeding suspicious character of the testimony of the prosecutrix falling little short of downright perjury, and the fact that the time and place were pointed out where these interviews took place, which can be shown to have been false on another trial, all serve to bring us within the principle of the case of *The People vs. Lincoln*, 20 Ill., 365, and ought to induce the court to hesitate before pronouncing this youth of sixteen guilty of a charge which is the most easy to prove and the most difficult to disprove of any in the law.

CHARLES H. WOOD,
for Plaintiff in Error.

9 P.D.
Francis M. Wilson
vs
The People

Points of
Pltff. in Error

Filed Apr. 16th 1861
G. Leland
Clerk

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ads.

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CHARLES H. WOOD,
for Plaintiff in Error.

^{G. P. 2}
Francis M. Wilson
vs
The People

Points of
Pltff. in error

Filed April 16. 1861
V. Wilson
Only

Supreme Court of the State of Illinois
April Term A.D. 1861

Francis M. Wilson }
vs } Error to Inquire
The People &c }

Points and authorities
submitted by Dep't in Error

It was not error to allow the
re-examination of the witness
as to the new matter but a
matter of assertion with the
court - 5th ^{2d Sec 485} ⁴⁸⁸⁻⁴ Wend
248 - 6 Wend 268 - 8 Conn. 63

This is not a criminal case,
for if it is, the defendant must
be indicted Art 13 Sec. 10 State Court
and the rules need not be
adhered to so strictly as in cases
of that nature

Although the statute
does not require that the
giving of the bond shall be
made part of the judgment,
yet, it requires the bond to be
given (Partly 2d Sec 5) and that

being made part of the judgement
would not prejudice or effect the
defendants rights and therefore
would not vitiate - it is
surely surplusage

His testimony was amply
sufficient to authorize the
judgement. There, is no
conflict except so far as the
affair is concerned, That was
obtained four days after the
imprisonment of the prosecuting
a girl of eighteen years - while
she was weak and feeble - under
the influence of fear caused by
threats of the defendant "that
if she did not clear him he
would sententiate her" of
flattery and assumed friendship
whispered in her ear by the
sycious tongue of the witness
Stethem, who tells her that she
was always an amiable and honest
girl and ^amodel for others that
although unfortunate she
would always have friends
and that he did not want her

to violate her conscience in
any thing she said or did, nor
to tell him any of her secrets
and then evolly asks her if
she would have any objection to
their sending for ~~any~~ ^a registrar
and taking her affidavit that
the defendant was not the
father of her child, and this
too while her friends were all
absent. for the villainous
purpose of entrapping and
perjuicing our unprotected
weak and unfortunate girl
It is not strange that the
evidence should show, as
it does, that she was restless
and slept none the following
night

The evidence does not
even tend to show and it is
not pretended, that she had
had intercourse with any
other person than the defendant
& Horvey. The time between
the birth and the day when
she left Horveys & last had
an opportunity for intercourse
with him, is greater than the

period of pregnancy but who
places the matter beyond doubt
is, that Heervey swears absolutely
and unequivocally that he never
had intercourse with her.
The abstract does not set out
the evidence fully, but omits
a large part which is important
for the people.

The appearance of newly discovered
~~evidence~~ evidence in support of the motion
for a new trial, is not
sufficient. It does not show
sufficient diligence - the
evidence is cumulative one, ^{in itself}
testifying to the same thing
on the trial - and it goes
to impeach the prosecution.
14 Dec 1861

The jury were not improperly
communicated with by the
court. They were polled and
each answered that is was his
verdict. The appearance of the
officer in charge of the jury
shows that he did not deliver
the message mentioned in the

jurors affidavit, but that he was requested by the jury to enquire of the Court if the Court would accept of a verdict that the jury had agreed to disagree which he did and returned to them the answer of the Court which was that he would not affidavits of jurors cannot be received to impeach their verdict or explain the grounds of it

3 Scam. 81

The fourth instruction asked by the defendant was properly refused because it assumes ~~assumes~~ that if any person besides the defendant had intercourse with the prosecutrix during pregnancy there is a probability that that person was the father even if he had had but one connection and that one only an hour before the birth - and because it requires the jury to be satisfied beyond a reasonable doubt. This not being a criminal prosecution

D. J. Jones State Atty.

D. P. Jones
States my

Welsch 9-P.L.
us -
The People

Prints & Authorities
for Deft in Error

Filed May 4-1861

L. Leland

Clerk

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4 Appeal bond from the Justice, in the usual form.

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8 James Fletcher appointed State's Attorney to prosecute this case, November 22d, 1860.

10 Issue made of whether Francis Wilson is the father of a female bastard child of which Lucy Francis was delivered, on 19th day of July, 1860.

Defendant pleads not guilty.

Trial by jury. Verdict, that they find the defendant guilty.

11 Motion for a new trial.

12 Motion for new trial overruled, November 30th, 1860. Defendant excepted.

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35 lying. I told her not to sign the affidavit unless it was true. My mother occupied the dining room from the sixth or eighth of October till about the 20th of that month.

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The jury were unlawfully tampered with by messages from the Court.

The Court erred in overruling motion for a new trial on affidavit
of new discovered evidence.

The Court erred in granting the 4th instruction for the People.

The Court erred in refusing the 4th instruction for defendant.

The Court erred in overruling motion for a new trial, and rendering
judgment against the defendant.

9 P.D.
Francis M. Wilson
Pltff. in Error
vs

The People

Abstract

Filed Apr. 25-1861

L. Leland
Clerk

IN THE SUPREME COURT,

APRIL TERM, A. D. 1861.

FRANCIS M. WILSON,
Plaintiff in Error,
ADS.
THE PEOPLE OF THE STATE OF ILLINOIS,
Defendants in Error.

} *Writ of Error to*
 Iroquois.

This was an action of Bastardy, tried at the November term, A. D. 1860, of the Iroquois Circuit Court.

November 5th, 1860. Affidavit filed in the Circuit Court.

Rec. p. 2 STATE OF ILLINOIS, } ss.
 Iroquois County. }

The complaint of Lucy Francis, of said County, an unmarried woman, made before William F. Keady, Esq., one of the Justices of the Peace in and for said County, under oath, who says, that on the 19th day of last July, A. D. 1860, at the residence of Curtis Orms, in Ash Grove, in the County aforesaid, she was delivered of a female bastard child, and that Francis Wilson, of Ash Grove, in said County, is the father of the said child.

3 Justice's warrant, in usual form.

4 Appeal bond from the Justice, in the usual form.

6 Justice's transcript, certified to the Circuit Court, showing that the defendant was bound over to answer the charge.

8 James Fletcher appointed State's Attorney to prosecute this case, November 22d, 1860.

10 Issue made of whether Francis Wilson is the father of a female
bastard child of which Lucy Francis was delivered, on 19th day of
July, 1860.

Defendant pleads not guilty.

Trial by jury. Verdict, that they find the defendant guilty.

11 Motion for a new trial.

12 Motion for new trial overruled, November 30th, 1860. Defendant
excepted.

13 Judgment of the Court, that Francis Wilson do pay the sum of fifty
dollars yearly, for seven years, for the support and maintenance of the
said bastard child of the said Lucy Francis, together with costs.

Order to defendant to file bond in the sum of \$800, with County
Judge, with James Wilson as security, conditioned for payment of judg-
ment. Thirty days allowed to file bill of exceptions.

14 December 1st, 1860. Bond filed and approved; defendant dis-
charged. December 27th, 1860, bill of exceptions filed.

15 BILL OF EXCEPTIONS.

Shows that Lucy Francis was sworn, and testified that she was an
unmarried woman, and gave birth to a female child 19th July, 1860.
That Francis Wilson was the father of it. Had been in Ash Grove
about four years. Stopped first at home, at Curtis Orms'; then went to
16 Wilson's about a year; then to Mr. Willoughby's, and resided two weeks;
then went a second time to Mr. Wilson's, and resided about two years;
then, May 1st, 1859, went to Mr. Harvey's, and resided five months;
then went direct to Mr. Wilson's again. Did house work at Harvey's;
his wife was not living. Last fall first had intercourse with a man. It
was with Francis Wilson. He is sixteen years old. He told me he
would marry me. I didn't let him have intercourse the first time he
17 asked me. He asked me half a dozen times, probably.

18-20 Details six times that she was solicited before intercourse occurred
in the dining room. I stated to no person but my mother, for four days
after the child was born, whose child it was. I did not within six days,
nor any other time. I signed a paper within six days after, saying that
it was not Francis Wilson's child. I did state to John B. Clark that the
child was not Francis Wilson's; it was within four days I stated that.

22 I never told Edward Wilson, under the promise of privacy, that the child was Wesley Harvey's; I never told him any such thing. I never told him that just before I left Mr. Harvey's, he came and got into bed with me.

23 The plaintiff then proposed to re-examine the witness as to whether intercourse took place subsequent to the time about which she had been examined. Defendant objected. Objection overruled, and defendant excepted. Witness then stated that defendant had had intercourse some half a dozen times, and that Francis had threatened to penitentiary her in case she did not clear him of the charge. Francis didn't state that
24 there was a rumor around that he was the father of the child, and that if I swore to a lie it would penitentiary me. Francis said that there was a report that he was the father of the child. And he also said if I swore false it would penitentiary me.

25 Details subsequent interviews, and all in the dining room. Was sure that Mrs. Wilson did not occupy the lounge there.

26 Nancy Orms sworn, and testified that the child was born 19th July, 1860. She was at Harvey's from the first of May, 1859, till the 2d of October after; then went to Wilson's, and staid till July 15th, 1860.

27 Melissa Francis testified to Francis telling Lucy that she was a nice girl, and threatened to penitentiary her if she did not clear him. Did not hear distinctly all that was said. Harvey came two days after the child was born, and wanted to know if Lucy swore the child on to him. He came again in about a week and a half.

29 John B. Clark sworn on the part of the defendant. I went to Mr. Orms' house some time in July last. Edward Wilson went with me. I had an affidavit written out, exonerating Francis Wilson from being the father of the child. She said she was willing to sign the affidavit and be qualified to it. She signed it and I qualified her to it:

STATE OF ILLINOIS, }
Iroquois County. } ss.

Before me, John B. Clark, a Justice of the Peace, personally came Lucy Francis, who being by me duly sworn, deposeth and saith, that the child of which she was lately delivered does not belong to Francis M. Wilson.

30 Signed and sworn to July 24th, 1860.

She seemed calm and quiet. She had some conversation with Mr. Edward Wilson. He told her that he was friendly to her, and if his brother was guilty he did not wish her to exculpate him. She signed the affidavit voluntarily, and I swore her to it.

John H. Stidham testified that he visited Lucy Francis, and that he cautioned her as to what she might talk about the matter, and advised her to send for the father of the child, and settle with him privately.
31 She then told me it was not Frank's child, and that she never said it was. Edward Wilson said, since you have cleared Frank, would you have any objection if we brought Squire Clark here and have him take your affidavit to that effect. She said "No." She understood herself at the time, and had the possession of her faculties, if I am any judge.

32 Edward Wilson and I went out and left Francis in with Lucy awhile, and I think this conversation occurred after we went in.

Edward Wilson testified to about the same as Esq. Stidham, and
34 then goes on to say, that after Stidham had left, he had a long conversation with Lucy, and she told him that the child was Wesley Harvey's. Mrs. Orm told Lucy the next day that she didn't want any more of her
35 lying. I told her not to sign the affidavit unless it was true. My mother occupied the dining room from the sixth or eighth of October till about the 20th of that month.

37 Wesley Harvey swore that he never had had sexual intercourse with Lucy Francis.

Bill of exceptions contains all the evidence.

The Court gave the following instruction for the People:

That if the jury believe from the evidence that the People have proven the child of Lucy Francis to be the child of Francis Wilson, and that the defendant, Francis, has failed to show by evidence that such is
38 not the fact, then the law is for the plaintiff, the People.

To the giving of which instruction the defendant excepted.

40 The Court refused to give the following instruction, to which the defendant excepted:

The jury are further instructed, that the defendant is not bound to prove that Wesley Harvey, or anybody else, is the father of the child, and if the jury believe from the evidence that Francis Wilson had sexual intercourse with Lucy Francis, and also that any other person had sexual intercourse with her, within the period of the duration of pregnancy immediately prior to her delivery, then they must be satisfied beyond a reasonable doubt that the evidence for the prosecution excludes the probability of that other person being the real father of the child, else the law is for the defendant.

41 Affidavit of defendant, showing that he can prove by his mother,
42 who occupied the dining room at the time the girl swore intercourse took
place, she being then sick there, that it could not possibly have been
done. And that he could not foresee that the girl would have sworn so
as to render this testimony necessary.

44 Affidavit of juror, Daniel Lawrence, that the Court sent two or three
messages to them in relation to their duty, the last one of which was,
45 "That a verdict of the jury to disagree would not be accepted by the
Court," and then added, "that the jury would have to be all agreed
before they could give in a verdict and be discharged;" which induced
affiant to agree to a verdict against his conscience, and supposing he was
complying with a legal requirement of the Court, else he would not have
done so.

47 Affidavit of Westbrook does not controvert affidavit of Lawrence.

48 Defendant excepts to overruling motion for a new trial.

ERRORS ASSIGNED.

The Court erred in allowing the prosecuting witness to examine to
new matter.

The Court erred in making the giving of the bond part of the
judgment of the Court.

The verdict is against the evidence.

The verdict and judgment are contrary to law.

The jury were unlawfully tampered with by messages from the Court.

The Court erred in overruling motion for a new trial on affidavit
of new discovered evidence.

The Court erred in granting the 4th instruction for the People.

The Court erred in refusing the 4th instruction for defendant.

The Court erred in overruling motion for a new trial, and rendering
judgment against the defendant.

9. P.D.
Francis M. Wilson
Pltff in Error
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The People

Abstracts

Filed Apr. 25- 1861

L. Leland

Clerk

The People of the State of Illinois.

To all to whom these presents shall come, Greeting:
Know Ye, That we having caused to be inspected the
Records and proceedings now remaining in the office of
the clerk of the Circuit Court of Ingham County
do find certain Records and Proceedings in the words
and figures following to-wit:

" United States of America
" State of Illinois
" Ingham County

ss.
I, _____
County Clerk

Has before the Honor-
" able Charles R. Stone Judge of the Twentieth Judicial
" Circuit and presiding Judge of the Ingham County
" Circuit Court in the State of Illinois at a term of the
" Circuit Court of said Ingham County begun and held
" at the Court House in the town of Middleport in
" said Ingham County on the third Tuesday the
" same being the 20th day in the month of Novem-
" ber in the year one of Our Lord One thousand
" eight hundred and Sixty.

" Present-

" Chas. R. Stone presiding Judge of the 20th Judicial
" Charles H. Ford State Attorney In. Dem.
" Frederic Ayres Sheriff of Ingham County
" Thomas Vennum Clerk of the Circuit Court

Be it remembered that on the 5th day of November A.D. 1860 there was filed in the office of the Clerk of the Circuit Court an affidavit which reads in the words and figures following to-wit:

" State of Illinois

" Duquoin County of

" The complaint of Lucy Francis of said County an unmarried woman made before William F. Keedy Esquire one of the Justices of the Peace in and for said County under oath who says that on the 19th day of last July A.D. 1860 at the Residence of Curtis Orm in Ash Grove in the County aforesaid She was delivered of a female bastard child and that Francis Wilson of Ash Grove in said County is the father of the said child

" Taken Signed and Sworn this

" 8th day of October A.D. 1860

" W. F. Keedy J.P."

" Lucy Francis "

And afterwards to-wit:
On the 5th day of November A.D. 1860 there was filed in the office of the Clerk of the Circuit Court a "Warrant" which reads in words and figures following to-wit:

" State of Illinois
 " Progreis County

" The People of the State
 " of Illinois to the Sheriff or any Constable of
 " said County:

" Whereas Lucy Francis in the
 " said County an unmarried woman has
 " this day made complaint under oath be-
 " fore H. P. Heady Esquire a Justice of the Peace
 " in and for the said County that on the 19th
 " day of last July (1860) at the residence of
 " Curtis Orr in the County aforesaid she
 " was delivered of a female Bastard Child
 " and that Francis Wilson is the father of
 " the said child

" We Therefore Command you
 " to arrest the said Francis Wilson and
 " bring him before the said Justice to answer
 " unto the said Complaint and to be fur-
 " ther dealt with according to Law

" Given under the hand and Seal of the said
 " Justice the 8th day of October A.D. 1860

" H. P. Heady

" Justice of the Peace

Said which said Warrant was
 endorsed as follows To wit:

Executed the within by arresting the
 within named Defendant and he is now
 in Custody - October the 9th 1860.

Tras Mileage 90
 Service 25) \$115

William Smith Constable

And afterwards Tied on the 9th
 day of November A.D. 1860 there was filed
 in the office of the Clerk of the Circuit Court
 a certain "Bond" which reads in the words
 and figures following To wit:

State of Illinois of
 Proquois County

Know all men by these
 presents that we Francis Wilson, James Wilson
 and John H. Stebbins are held and firmly
 bound unto the people of the State of
 Illinois in the Sum of Four Hundred dol-
 ars. to be paid to the said people for
 which payment well and truly to be made
 we bind ourselves our heirs executors and
 administrators jointly and severally firmly
 by these presents

Scaled with our Seals and dated the 11th
 day of October A.D. 1860

Thomas Campbell

5



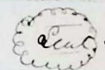
has been made before William F. Neady
Esquire one of the Justices of the Peace in
and for the Said County of Ingham by Lucy
Francis of Ash Grove in Said County an
unmarried woman that on the 19th day
of July A.D. 1860 She was delivered of a
female Bastard Child and that Francis
Wilson is the father of the Said Child
Whereupon the Said Justice issued a warrant
and ^{caused} ~~ordered~~ the said Francis Wilson to be
brought before him to answer the said
Complaint and to be further dealt with
according to law and upon examination
of the said Lucy Francis upon oath in
the presence of the said Francis Wilson
Touching the said Charge and upon due
consideration thereupon had the Said
Justice was of opinion that Sufficient
cause appeared and did adjudge and
determine that the said Francis Wilson
enter into a Bond with good and Sufficient
Security to appear at the next
Circuit Court to be held in and for said
County of Ingham to answer to such
Charge.

Now Therefore the Condition of
the Obligation is Such that if the above
Command Francis Wilson Shall appear

" at the next Circuit Court to be held in
 " and for the said County of Duquoin and
 " answer to the said complaint and not
 " depart the Court without leave then this
 " obligation to be void otherwise to remain
 " in force

" Signed Sealed and delivered
 " In presence of

William

" J. W. Wilson 
 " James Wilson 
 " John B. Stidham 

And afterwards Cometh On the
 fifth day of November A. D. 1865 there was
 filed in the office of the Clerk of the Cir-
 cuit Court a "Manuscript" which reads
 in words and figures following Cometh

" State of Illinois
 " Duquoin County S.S. "

" Lucy Francis
 " vs
 " Francis Wilson } Bastardy "

" Justice for
 " Com 25 " 1865 Oct. 8th personally appeared before me
 " Char 25 " Lucy Francis who upon affidavit says
 " 3 Subs 75 " that on the 19th day of July last A.D.
 " 100th 64 " 1865 at the residence of Curtis Arm in
 " Just 25 " Ash Grove County aforesaid She was

7

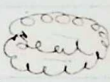
"Bond. 50 delivered of a female Bastard Child and
 "Trans. 25 that Francis Wilson of Oak Grove in said
 "County is the father of ^{the} said child -
 "§ 2, 36 1/4 Whereupon a warrant issued and was del-
 "ivered to Const. William Smith to execute
 "two subs. also issued and delivered to same
 "Const. - Oct. 10th 1860 Warrant returned executed
 "by arresting the defendant and delivering
 "him into the custody of the Court Oct. 10th
 "Const. Smith & 1860 Const. fees \$ 1.15 Three Subs. retur-
 "ned served fees \$ 7.97 1/2 Case called Com-
 "plaint read to the defendant who pleads
 "Not Guilty. Lucy Francis Sworn and ex-
 "amined after which the case was submitted
 "It is considered by the Court that the defen-
 "dant is guilty as charged in the complaint
 "and that he be recognized for his appearance
 "at the next term of the Circuit Court in
 "the Sum of Four Hundred dollars - Bond
 "taken with James Wilson and John B. Stidham
 "as his Sureties

"W. F. Keady J. P."

"State of Illinois
 "Proqwis County S.S. I W. F. Keady a Justice
 "of the Peace in and for said
 "County do certify that the foregoing is a
 "true Transcript of all the proceedings had
 "before me in this cause and that I am

" I transmit all the papers belonging to
 " the cause

" In Testimony Whereof I hereunto placing
 " hand and Seal this fifth day of Novem-
 " ber a D 1865

W. F. Keady 
 " J. J. "

And afterwards to wit, On the
 22d day of November a D 1865 the same
 being one of the regular days of the November
 term of the Ingham County Circuit Court
 for the year 1865 the said Court being then
 duly organized and sitting in open court
 for the transaction of judicial business
 the following proceedings were had and
 entered of Record by said in the words and
 figures following to wit,

" The People of the }
 " State of Illinois }
 " vs }
 " Francis Wilson } Keady "

" It appearing to the court
 " that Charles H. Wood the State's attorney
 " appointed for this term of Court, is of coun-
 " sel for the defendant in this cause, it is

9

= therefore the court ordered that James Fletcher
= be and he is appointed by the court to
= prosecute this cause

And afterwards Term on the
23d day of November. A D 1860 it also
being one of the regular days of the November
Term of Said Court for Said year 1860
The Said Court being then duly organized
and sitting as aforesaid certain other
proceedings were had and entered of Rec-
ord by said court in the words and figures
following To wit

" The People of the
" State of Illinois
" 80 vs
" Francis Wilson
" Richard J."

" And now comes James
" Fletcher Attorney for the people into court
" and the defendant Francis Wilson also app-
" eared in person. And thereupon the court
" directed the issue to be made up in this
" cause and entered of Record To wit
" Lucy Francis charges that Francis Wilson
" the defendant in this cause is the fat-
" her of a female Bastard Child of which
" she the said Lucy Francis was

" delivered on the 19th day of July A.D.
 " 1860 at Ash Grove in Ingham County
 " Illinois. And the Said defendant Francis
 " Wilson being arraigned at the bar of this
 " court in due form of law. And the charge
 " against him being made known to him
 " by the court, And the court having de-
 " manded of the Said defendant how he
 " would acquit himself of the Said charge
 " for plea says he is not guilty in manner
 " and form as charged which the Court
 " ordered to be entered of Record

" And thereupon on motion a jury came
 " by order of Court (Jury) Noble L. Clement
 " H. H. Stone, Solomon White, Josiah Matzenbaugh
 " Henry Lyman E. C. Kummell, Daniel Scammon
 " John Zumwalt Joseph Robinson, J. Gendron
 " John Young and A. Coughenour twelve good
 " and lawful men who were then and there
 " duly and legally empaneled and sworn
 " to well and truly try the cause upon
 " the issues joined according to law ^{and} evidence

And afterwards Term in the
 24th day of November A.D. 1860 it also
 being one of the regular days of the
 November term of said Court for said
 year 1860 the Said Court being then duly

11

organized as aforesaid certain other proceedings were had and entered of Record by said Court in the words and figures following to wit

" The People of the
 " State of Illinois
 " vs
 " Francis Wilson
 " Bastardy"

" The jury in this cause
 " after hearing the evidence adduced on
 " the trial the arguments of Counsel and
 " the instructions of the Court retire in
 " Charge of a Sworn officer to consider of
 " a Verdict - and afterward return into
 " Court and for a Verdict Say they find
 " the defendant 'guilty' And the jury
 " on request of defendants Counsel being each
 " of them interrogated in reference to said
 " Verdict by the Court. Severally answered
 " that they Signed the Same and that
 " they are still Satisfied therewith as the
 " Verdict in this cause

" And now come the defendants
 " Counsel and enter their Motion for a
 " New Trial in this Cause"

And afterwards Comt on
 the 2nd day of November A. D. 1865
 it also being one of the regular days
 of the November term of Said Court for
 Said year 1865 The Said Court being then
 duly organized as aforesaid certain other
 proceedings were had and entered of Record
 by said Court in the words and figures
 following Comt.

" The People of the
 " State of Illinois
 " 80 vs
 " Francis Wilson Rastardy

" And comes James Fletcher
 " Attorney for the people into Court and
 " enters his motion for judgment on the ver-
 " dict in this Cause - And the motion
 " by the defendant for a new trial in this
 " cause coming up for argument and the
 " Court having heard the arguments of Counsel
 " thereon and having duly considered the ma-
 " ter ordered that the motion for a new
 " trial be and it is overruled to the over-
 " ruling of which Motion the defendant by
 " his Counsel then and there excepted -
 " It is therefore ^{considered} ordered and adjudged
 " by the Court that the defendant

Francis Wilson do pay the Sum of Fifty
 dollars yearly for Seven years for the Sup-
 port and maintainance of the said bastard
 child of the said Lucy Francis - and it
 is further ordered that the People do have
 and recover of and from the defendant
 Francis Wilson their Costs and Charges
 expended in the prosecution of this Suit
 and that they have Execution therefor against
 the said defendant - And it is ordered
 by the Court that the defendant Francis
 Wilson do enter into Bond in the Sum of
 Eight Hundred dollars to the County Judge
 of Strogan's County as required by law with
 James Wilson as Security on said Bond
 And on Motion it is ordered that the de-
 fendants counsel be allowed thirty days
 in which to prepare and file with the
 Clerk of this Court a Bill of Exceptions
 in the cause -

And afterwards Term) On
 the 1st day of December A.D. 1865 it
 also being one of the regular days of the
 December Term of said Court for said
 year A.D. 1865 the said Court being then
 duly organized as aforesaid Certain
 other proceedings were had and entered

of Record by said Court in the words and figures following To wit.

"The People of the
"State of Illinois
"vs
"Francis Wilson

Justady

"And now comes the defend-
"ant into Court in person and by his
"attorneys and files ^{his} Bond with James Wilson
"as Security in compliance with the previous
"order of this Court which upon examination
"is approved by the Court

"His Honor
"ordered that the defendant be discharged
"from custody and that the Bond aforesaid
"be filed with the County Judge of Ingham County

And Afterward To wit, On
24th day of December A.D. 1860 There
was filed in the Office of the Clerk
of the Circuit Court a "Bill of Exceptions"
which reads in words and figures follow-
ing To wit.

The People of the { In the County Court of
 State of Illinois { of the November Term A.D. 1865
 is { Action of Hasty
 Francis M. Wilson { Bill of Exceptions

And Reminded that that
 on the trial of the above entitled cause
 the people to maintain the issue on their
 part introduced the complaining witness
 Lucy Francis who being sworn testified
 as follows:

My name is Lucy Francis -
 I reside in Ash Grove at Curtis Arms
 in Morgan's County Illinois - First came
 there four years ago this fall - I am
 nineteen years old - The nineteenth of July
 last I was at Curtis Arms - I had been
 residing before that time at Mr Wilsons
 Mr Willoughbys and Mr Harveys -
 Before the nineteenth of July last I had
 resided at Mr Wilsons about nine months
 Had been at home three days from the
 time I left Mr Wilsons before I was sick
 previous to going to Mr Wilsons I had
 resided at Mr Harveys The Second of
 October last year I went to Mr Wilsons
 I am not a married woman have
 never been married - I am the mother

" of a child born the nineteenth of July
 " last - Francis Wilson is the father of it -

" The child is a girl -

" Prof. B. I have resided here four years this fall
 " at Ashgrove - I resided there when I
 " first came to the County - I was just
 " at home then went to Mr Wilsons dont
 " recollect the year it was four years this
 " fall I first went there - resided there
 " about a year then I went to Mr Will-
 " oughby and resided there two weeks -
 " Then I went a second time to Mr Wilsons
 " and resided there about two years - Then
 " I went to Mr Harvey. This was in the
 " first of May 1859 resided at Mr Harvey
 " five months - then went direct to Mr.
 " Wilsons - I did house work at Mr Harvey.
 " Harvey resides about four miles from
 " Wilsons - Harvey was a farmer - a couple
 " of his nieces resided there one about nine
 " ten the other about fourteen years old.
 " His wife was not living - I kept house
 " for him - during the time I was at Harvey
 " he never made any advances to me - I never
 " had any intercourse with him - Last fall
 " I first had intercourse with a man -
 " It was with Francis Wilson - He told
 " me he would marry me - I didn't let

them have intercourse the first time she
 asked me. He asked me half a dozen times
 probably - only once a day the first asked me
 in the Kitchen of his father's house in the evening
 about six or seven o'clock. This was three or four
 days after I went to Mr Wilsons. The first
 words he said were that he would marry me.
 He was standing - There were others about the
 house - He wanted to do something to me then,
 He put his arms around me and I around him
 He had never done anything before - His
 father and Mother and Brothers and Sisters
 were in the Red Room - Part of them had gone
 to bed. He made advances again the next
 day along in the forenoon. I was then in the
 dining Room He said the same as he did
 before. I told him I did not like to do so
 He once was in the dining Room at that
 time - Others were in the house, in the Red
 Room. He was in the Kitchen. I was on
 one side of the dining Room on the Side next
 to the Kitchen. I was standing up he wanted
 to have intercourse with me there in the dining
 Room - there was a Lounge in the dining Room.
 He wanted to have intercourse with me in
 the dining Room that forenoon - I was
 willing for him to have intercourse if he
 would marry me. His Mother and Sisters

were in the Red Room - They were not in Red-
He made advances to me on the third day -
I don't know when it was - it was in the
House in the dining Room - it was in the
middle of the day while I was getting dinner
He wanted to get his gratification right there -
He put his arms around me and I mine around
him. He did not kiss me nor I him - He made
advances on the fourth day in the dining Room
It took place along in the evening. He had Sup-
per at 8 & 9 o'clock - it was before supper.
He told me he would marry me. He did not
hug me. I was getting Supper for the family.
There were 5 in the family Mr Wilson and
Mrs Wilson and four children. They had
no hired men at that time - On the fifth
day he came and told me that he would
marry me I told him I would marry him.
It was in the dining Room in the forenoon
It was not at breakfast nor at dinner time
The women of the House and the Children
were in the Red Room - The door was open
from the Kitchen to the dining Room -
He didn't do anything that day. He put his
arms around me and I around him but
I didn't indulge him - I was doing work that
needed to be done cleaning up the house -
Red Room door was shut that was their

" usual Sitting Room - Francis was doing
 " work on the farm - He always came to the
 " house alone and went out alone - The Sixth
 " day in the dining Room he said to me
 " marry me. I told him I would marry him
 " didn't say any thing else - The woman of
 " the house and her children were there - It
 " was in the evening after supper. Mr Wilson
 " was out around somewhere - He was not in
 " the house The Woman of the house and the
 " children had gone to bed - He threw me down
 " ^{I was not willing to be thrown down}
 " I told him he might have intercourse with me
 " with my consent he had it - There was no light
 " in the Room - It was after dark - it was
 " at the South end of the Room - the Room
 " was longest North South - It was eight or
 " ten feet long by six or eight feet wide - The
 " doors open into the Room on the west side
 " One door opens into the Kitchen, one into the
 " Bed Room and one up Stairs - There was
 " no one up Stairs - One of the Boys had a
 " bed up Stairs it was about Wilsons, He is
 " about Twelve years old - There was no body
 " in the Parlor - The Bed Room door was shut
 " there was no one in the Kitchen - I didn't
 " go out to see whether any one was there -
 " The Kitchen is the West side of the Dining
 " Room It is about twelve feet square

" The dining Room is the largest. Mr Wilson
" at the time this Transaction occurred was
" out on the farm. He was out about his
" Business I suppose. Am sure he was not there
" About six days after I went there this occ-
" urred - I stated in the Court below it was
" about ^{Eight} or ten days after I went to Wilsons.
" I am right now in the time. There was a candle
" burning in the Kitchen I made no Rattling of
" Chairs and had no Scuffling in the dining Room
" That was the first time an occurrence of this
" kind happened to me - I was not accused
" of being in the family way by any body. Mrs
" Wilson did not accuse me - I had no conversation
" with my Mother about it - My Mother said
" she had Suspicions - I stated to no person
" but my Mother for four days after the child
" was born whose Child it was - I did not
" within six days nor any other time - The
" Child was born the nineteenth day of July
" I signed a paper within six days after
" saying that it was not Francis Wilson's
" Child - I never stated that it may not be
" Child of Francis Wilson - I did state to
" John R. Clark that the Child was not
" Francis Wilsons - it was within four days
" I stated that - it was not in the presence
" of any one else - I did not state in the

" presence of John Stidham that it was not the
" Child of Francis Wilson - I did State in
" the presence of Edward Wilson that it was not
" Francis Wilsons I didnt understand the
" Question when I said that in the presence
" of John Stidham - I did not say that
" it was not Francis Wilson's Child - I never
" said in the presence of Edward Wilson -
" "Frank you know that child is not yours"
" I did not say it - I did not say it in the
" presence of John Stidham - About a day
" after the child was born I said it was
" Frank Wilsons to my mother - I never
" talked with Wesley Harvey about it
" between the time my child was born and the
" time Wilson was bound over to come to the
" preliminary trial Harvey did not start
" from Orms nor did he come in the same
" conveyance - Since the trial before Esq. Keedy
" I have had no talk with Mr Harvey - I
" did not go to David Strauss before I came
" here since my child was born - My Step
" Father just spoke to me about making a
" complaint against Frank Wilson My Step
" father Mr. Orm did not say any thing to
" me about commencing proceedings against
" Wesley Harvey. I never told Edward Wilson
" under the promise of privacy that the child

22

" was Wesley Harvey. I never told him any such
 " thing. I never told him when and where Mr.
 " Harvey had intercourse with me. I never told
 " him that just before I left Mr Harvey he came
 " and got into bed with me. No one ever talked
 " with me about Mr Wilson being a Rich man.
 " Nobody but Mr Orm talked with me about the
 " father of the Child down to the time the woman
 " was taken out - that Mr Orm spoke to me
 " It was a couple of months before the woman
 " was taken out that Mr Orm spoke to me
 " about it - I didn't think of taking Wilson
 " up till Orm spoke to me about it. There
 " had been considerable talk in the neighbourhood
 " about it - I never had any talk about it
 " with Betty Harvey nor Mary Harvey nor
 " Catharine Harvey nor Jacob Hommel nor Henry
 " Bishop nor James Spain nor Elijah Spain
 " But I have with Curtis Orm and Nancy Orm
 " never talked with Melisa Francis nor William
 " nor William Horner - Mr Horner was there
 " when I was confined - He didn't come after
 " wards - I never had any talk with Mr.
 " Orm what I should say here nor with
 " any other person I was about eighteen a
 " year ago last October Francis Wilson was
 " then sixteen

" Re-Examined The plaintiff then proposed to

" remains this witness as to whether there was
 " intercourse Subsequent to the time stated
 " in her direct examination - The defendant ob-
 " jected But the Court overruled the objection
 " and the defendant excepted - The witness then
 " proceeded: After that Francis Wilson had in-
 " tercourse with me about a half dozen times
 " I did not comprehend Mr Faddocks question
 " (one of the counsel for the defence) - I don't
 " recollect Mr Stidham coming to Mr Orms.
 " on the same day before Mr. Clark came
 " Mr Stidham Edward Wilson and Francis Wilson
 " came - They were out of doors when Francis was
 " in Francis told me I was a fine girl and if
 " I didn't clear him he would penitentiary me
 " This was four days after the child was born
 " when Mr Stidham came in and Edward Wilson
 " they did not say anything
 " Crof Ex - I was afraid that Francis would imprison me
 " and that is the reason I signed the paper On the
 " next day I told Stidham and Clark that
 " Francis was clear of the Charge - I loved
 " Francis and was willing to become his wife
 " I believed he told me the truth when he said
 " he would marry me - I never had intercourse
 " with Wesley Harvey - He never came to my
 " bed - I persisted in telling them it was not
 " Francis child because he had threatened me

He Told me when it came to do so he would marry
 me - Mrs Wilson didn't charge me with being
 with child - There was no doctor there when ^{my} ~~any~~
 child was born - The same day my child was
 born I told my Mother whose child it was - Four
 days after I was confined Francis Wilson came
 I reminded him then of his promise - He said
 he thought I was a nice girl and if I didn't
 clear him he would penitentiary me - I
 can't comprehend what Mr Fletcher says but
 I didn't understand all your (Mr Paddock's) ques-
 tions - Francis didn't state that "there was
 a rumor around that he was the father of
 the child and that if I swore to a lie
 it would penitentiary me" - Francis said
 there was a Report that he was the father
 of the child - And he also said if I
 swore false it would penitentiary me - I
 had connection with him after the first time
 about a half dozen times - The first of these
 times was three or four weeks after the first
 in the dining room - it was eight or nine
 o'clock in the evening before the family went
 to bed - He didn't throw me down on the
 floor - it was done on the floor, Mrs Wilson
 was in the Bed Room, there was no light
 in the dining room - Francis Wilson was
 at home during all this intervening time

the ^{third} ~~said~~ intercourse took place three or four
 weeks after the second in the dining Room
 I slept down Stairs - Francis slept up Stairs -
 The fourth intercourse took place in two or
 three weeks after the third in the dining Room
 on the floor and the fifth and sixth in the
 same place and at about the same interval
 of time between Mrs Wilson was not occupying
 the Lounge in the dining room during this time
 don't remember the days of the week when con-
 nection occurred but think it was Week days He
 was together more on Sundays than week days
 He was together at other times than when we
 had connection - Mrs Wilson never told us
 when to go to bed He had our own time about
 that I am sure Mrs Wilson did not occupy
 the Lounge - I found out I was in the family
 before I ceased to have connection with him
 I never consulted with anyone as to what I was
 to say here

Mrs Nancy Ann Sworn: I am the mother of Lucy
 Francis - Curtis Orm is the Stepfather of
 Lucy Francis She is not married and never
 has been - She is a mother - Her child was
 born the nineteenth day of July last and
 is still living She resided most of the time at
 Mr Wilsons She stayed there the most of the
 time the first year with the exception of two

26

" week at Mr. Willoughbys. Then she went to Wilsons
 " again and stayed two years from the first of May
 " last year until the second of October she was at
 " Harveys - Then she went to Wilsons and remained
 " till the fifteenth of July last and then came
 " home and was confined the nineteenth - I Sus-
 " pected before that that time that she was in that
 " condition - She sent for a Physician but the child
 " was born before he got there she told me ^{or twenty} ~~the~~ the
 " father was about fifteen ^{or twenty} ~~minutes~~ minutes after
 " the child was born - She said it was Francis
 " Wilsons child - Her health was right poor - I
 " remained after the child was born till Monday
 " morning - I then went to Mr. Studebants and I
 " found her fretting and crying when I came back
 " She was not in a good condition I didn't ascer-
 " tain the state of her mind - She appeared
 " frustrated She did not get any rest that night
 " It was between day light sunrise the next day
 " before she got any rest I was not in the room
 " all the time when Squire Clark was there - I
 " was out in the other room - I heard them
 " reading the paper to her -

" Curtis's Own Story: The child was born in some hurry
 " After she first made complaint she was very soon
 " confined - It was probably a week after she
 " came from Wilsons before she was sick - The
 " child is a girl - I was at Mr. Wilsons during

" the time Lucy was there the last time occasionally
 " there was some furniture in the dining Room and
 " a carpet on the floor - Lucy was at Mr Harvey's
 " before she went to Wilsons the last time she came
 " from Harvey and went to Wilsons the same Sunday
 " don't recollect who came after her she came home
 " occasionally from Wilsons - I have been acquainted
 " with her about nine years

" drop. Ed. - After Lucy came home there was some talk
 " in the neighbourhood about this thing I had a
 " talk with Mr. Harvey about it at my house
 " about a week after the child was born - Lucy
 " occupied the Room where we usually sit - We
 " talked out of doors - Harvey was there twice. We
 " talked some about the child when he was there
 " He was at this place during the preliminary trial
 " Mr Harvey got married some two or three years
 " months before the child was born - I have talked
 " with Mr Spain about it - In the dining
 " Room of Mr Wilsons house there was a carpet
 " I don't recollect whether there was a sample
 " the carpet looked like one bought - I am sure
 " that Room was carpeted

" Melissa Francis Sironi I was at home when Lucys child
 " was born I was at home and in the house when
 " Mr Shidham Francis and Edward Wilson were
 " there - Mr Shidham and Edward went out,
 " and Francis remained in the house and he

"told her that she was a nice girl and he had
 "always talked in her favor and if she did not
 "clear him he would penitentiary her

"W. G. E. I was off some ten feet when Francis was talking
 "with Lucy - did not hear distinctly all that
 "was said - She didn't tell Frank "you know
 "that child is not yours" - Francis did not say
 "that there were rumors afloat that she was
 "charging him with being the father - Harvey came
 "there two days after the child was born - Harvey
 "asked her if she laid that child on to him -
 "she said, No Sir, About a week and a half
 "after the first time he came again - The
 "first time he came he had conversation with my
 "Father Mr. Orm,

"James Spain Sworn: I remember the time when Lucy
 "was confined - I went with Mr Harvey on the
 "Wednesday following the time the child was born to
 "Mr Orm -

"L. William Horner Sworn:

"I have resided at Ash Grove
 "a little over Six years - I was sent for to attend
 "Lucy Francis ~~that~~ didn't get there till half
 "an hour after the child was born - Her health
 "was good. She was some excited - I didn't see
 "her after that - I presume it would have pro-
 "duced some excitement to have threatened her
 "at that time - I gave instructions to keep her quiet

" it is nothing unusual to be sick and excited
 " right after such a time - It depends upon the
 " Constitution how much a woman can talk the
 " third or fourth day after confinement, - It depends
 " upon their Temperament, and moral perceptions
 " what the condition of the mind would be at
 " such a time)

" The People then resting their case
 " the defendant introduced John R. Clark who
 " being Sworn testified as follows: I have seen
 " Francis Wilson and Lucy Francis - I understood
 " the latter had a child - I went to Mr Orms
 " House some time in July last, Edward Wilson
 " went with me - I had an affidavit written
 " out exonerating Francis Wilson from being the
 " father of the Child - She said she was willing
 " to sign the affidavit, and be qualified to it -
 " She signed it and I qualified her to it. The
 " affidavit was produced and the Witness recognized
 " it as the affidavit to which he had sworn
 " Lucy Francis - And the Court thereupon permitted
 " it to be read to the Jury - Said Affidavit read
 " in the words and signing following to wit

" State of Illinois

" Inquire County SS. Before me John R. Clark
 " a Justice of the Peace personally came Lucy Francis
 " who being by me duly Sworn depose & Say that
 " that the Child of which she was lately delivered

" does not belong to Francis W. Wilson

" Taken Signed ^{And Sworn To}

" Before me this 21st day of July 1860. E Lucy & Francis's
 " John H. Clark Justice of the Peace } mark

" The Witnesses then proceeded: She seemed calm
 " and quiet - She had some conversation with me.
 " Edmund Wilson - He told her that he was
 " friendly to her and if his Brother was guilty
 " he did not wish her to exculpate him - She
 " Signed the affidavit voluntarily and I swore
 " her to it She raised up in the Bed and took
 " the pen and made her mark

" Croft R. - I wrote the affidavit in my office at the
 " request of Mr Francis Wilson - I am not positive
 " as to the time the affidavit was made - Wilson
 " requested me to draw an affidavit - But he
 " did not dictate it - I considered it part of
 " my official duty to go and take the affidavit
 " when requested

" John C. Stidham - Direct Examination - I went to
 " the House sometime in July with Edmund Wilson
 " and Francis Wilson I suppose Lucy had given
 " birth to a child - I told Lucy that I
 " sympathized with her - that I had always
 " considered her an amiable girl and an honest
 " girl and that I had considered her a
 " model for other girls in the Neighborhood
 " to pattern after - that she had always

" borne a good reputation - and that she need
 " not think now that because she had met with
 " this misfortune she would loose all her
 " friends - that if she conducted herself properly
 " hereafter she would always have friends -
 " I told her that I didn't want her to
 " violate her conscience in any thing she said
 " or done and that I did not want her to tell
 " me any of her Secret Secrets She then told
 " me that it was not Frank's Child and that
 " she never said it was I also told that she
 " knew who was the father of the child and I
 " advised her to send for the father of the
 " Child privately and arrange it with him
 " Edward Wilson said Since you have cleared
 " Frank would you have any objection if we
 " brought Squire Clark here and have him
 " take your affidavit to that effect She
 " said no." She understood herself at the
 " time and had the possession of her faculties
 " if I am any Judge

" Cross Exam. Something was said at the time when we
 " were there about her and Frank having a
 " private talk together - and Ed Wilson and I
 " went out of the House - I don't remember
 " distinctly whether I gave her the advice
 " before or after I went out of the House
 " Let her and Frank talk together - But

" not lost all her friends I told her that I
 " had always thought a ^{great} deal of her.
 " I finally told her that if she had confidence
 " in me she might tell me who the father
 " of her child was - She hesitated about it
 " and said "Now you must tell anybody if I
 " tell you" I told her I would not after
 " some hesitation she then told me that it was
 " Mesley Harveys child - When I got ready
 " to leave she said "Ed you are a friend of
 " Mums" I said yes if you conduct yourself
 " straight from this on - I went back the next
 " day with Francis and Squaw Clark. When
 " I went back next day I told her mother that
 " I had made no threats Mrs Oym didn't want
 " me to talk with her - She told Suey that
 " she didn't want any more of her lying - I
 " told her then separate times not to sign
 " the affidavit unless Francis was clear of
 " the Raags - She said she was willing
 " to sign it and she answered the same
 " way to Squire Clark and he swore her to
 " it - My fathers dining room is twelve by
 " fifteen feet on the floor - There was a
 " square table and chairs in it there was no
 " carpet on the floor One door entered into
 " the kitchen - My mother occupied the
 " dining room I think from the sixth or eighth

31

" of October of last year till about the 20th
 " of that month - They were accustomed to
 " sit up at my Father's at that time till
 " about Eight or nine o'clock They had no
 " fire in the Bed Room my Mother could
 " not sit up much at that time They would
 " bring her out into the dining Room to lay
 " on the lounge during the day till Bed
 " time when she would go to her Room

Crop Examined - I was married a year ago last
 " Fall and lived forty or fifty Rods from my
 " Father's house - When my Mother was in the
 " dining Room a mattress and a feather Bed
 " were laid upon the lounge This was in the
 " month of October of last year - They carried
 " her back and forth from the Bed Room
 " to the dining Room - The conversation that
 " Mr Stidham had with Suey was after Frank
 " and Suey had had their private conversation
 " together and directly after we came back
 " into the house while Mr Stidham and I
 " were out of doors Frank came to the door
 " and said "She is willing to clear me now"
 " after we went back into the house she said
 " that the child was not Frank's I remained
 " there that day while Frank & Mr Stidham
 " went after the Justice of the Peace - Suey's
 " Mother and Step Father were not home

" I waited there two or three hours and when
 " I found they were not coming I went home -
 " I went back next day with Squire Clark
 " and Frank when she swore to the affidavit,
 " When I went back next day they told me
 " that they had not rested any all night
 " and that she was worse, Mrs Orr did not
 " want me to talk with her.

" James Davis in Chief on part of People's Rebutting" I live

" but a short distance from Mr Wilsons my
 " wife and I went in on Pine to attend the
 " fair at Pine Village this was about the
 " Seventh of September in the fall of 1859
 " We were gone about two weeks, when we
 " came back Mrs Wilson was at her worst.
 " My wife and I were there very frequently
 " I was there almost every day - Mrs Wilson
 " did not lie in the dining Room she was
 " always in the Red Room - They called it
 " her Room I do not remember of ever
 " seeing her on a lounge in the dining Room
 " She was in her Room on a low bed -

" Dr. D. J. McNeill Sworn:

" I am a Physician I com-
 " menced practicing about seventeen years ago
 " practiced ten or twelve ^{years} - I have had
 " considerable practice in Obstetrics -

As a General Rule the duration of pregnancy is two hundred and eighty days or ten lunar months. There are ~~cases~~ cases that exceed and some that fall short of that time. I think it possible to vary a month beyond that time - Labor occurs at or ^{near} the regular Catamenial periods and hence may be shortened a week or extended three weeks.

The defendant, then closed his case. The People called Wesley Harvey who being sworn testified: That he was not the father of the child of which Lucy Francis was delivered last Summer. That he never had had sexual intercourse with her.

The above and foregoing was all the evidence in the case. The Court thereupon on motion of the counsel for the people gave the ^{following} instructions:

- 1st That if the jury believe from the evidence that the affidavit of Lucy Francis offered in evidence in this cause was extorted from her by threats made by Francis Wilson then said affidavit is no evidence of the truth therein contained and the jury should disregard the same in making up their verdict in this cause.
- 2nd That if the jury believe from the evidence ^{that} of Lucy Francis said that the child of her the said Lucy was the child of another

38

" That Francis Wilson through fear caused by
" the threats of Francis Wilson then so far as
" such admissions are considered concerned
" should be disregarded unless the jury shall
" believe that such admissions are true

" 3rd

" The jury in considering this case and in
" giving due weight to the testimony given in
" this case should take all the facts and
" circumstances into consideration

" 4th

" That if the jury believe from the evidence that
" the people have proven the child of Lucy
" Francis is the child of Francis Wilson and
" that the defendant Francis Wilson has failed
" to show by evidence that such is not the
" fact, then the law is for the Plaintiff the
" People

" 5th

" That it is in the province of the jury to de-
" termine whether a witness states the truth
" or a falsehood and they are to determine
" that matter in their own way from the
" circumstances of the case and everything
" taken into consideration they should judge
" of the witness when ^{he} or she has sworn to
" a falsehood or the truth

" 6th

" If the jury believe from the evidence
" that the child of Lucy Francis is the
" child of Francis Wilson then the jury
" should find the defendant guilty of

" the Charge in this Cause against him
 " To the giving of which Said
 " instructions and each one thereof the
 " defendant by his Counsel then and
 " there excepted

" Whereupon motion of the
 " defendants Counsel the Court gave the
 " three following Instructions to the Jury
 " The Court instructs the Jury for the
 " defendant, that in considering the weight
 " or Credence to be given to a Witness exam-
 " ined in a case on trial before them,
 " they have the right to take into consideration
 " the position of the Witness his or her interest
 " in the Subject matter the mode of an-
 " swering questions the ease with which
 " a Witness answers the Counsel calling
 " them the indifference or Stupidity with
 " which they answer or refuse to answer
 " the opposite Counsel any and
 " all Contradictions The Witness may make
 " also the look and action of the Witness
 " and if from these or other apparent contradictions
 " and inconsistencies, they believe the Witness is
 " not entitled to belief on the material points
 " to which he or she is testifying they have the
 " right if they so believe and it is their duty
 " to reject such evidence And if the Jury in

" this case believe the witness has wilfully and in-
 " tentionally sworn falsely in any one particular
 " the jury have the right to wholly disregard her
 " entire evidence or if they believe she has contradicted
 " or been contradicted by other evidence which the
 " jury believe to be true then the jury have the
 " right to wholly disregard her testimony and the
 " law in this behalf is for the defendant

" 2nd If the jury believe from all the evidence
 " that the child in question is not Francis M. Wilson's
 " child or if they believe there is a reasonable doubt
 " of its being his child then the law is for the defen-
 " dant, and he is entitled to a verdict in his favor

" 3^d The jury are instructed that they are not
 " simply to try the question whether or not the def-
 " endant had sexual intercourse with Lucy Francis
 " but they are ~~not~~ to decide whether Francis Wilson be
 " the real father of the child or not. The burden
 " of proof is on the prosecution and unless they have
 " proved Wilson to be the real father of the child
 " beyond a reasonable doubt the law is for the
 " defendant,

" The defendant then moved the court
 " to give the following instruction:

" 4th The jury are further instructed that the defen-
 " dant is not bound to prove that Wesley Harvey
 " or any body else is the father of the child and
 " if the jury believe from the evidence that

Francis Wilson had Sexual intercourse with Lucy Francis and also that any other person had Sexual intercourse with her within the period of the duration of pregnancy immediately prior to her delivery then they must be Satisfied beyond a reasonable doubt that the evidence for the prosecution excludes the probability of that other person being the real father of the Child else the law is for the defendant

Which Said instructions the Court refused to give and the defendant then and there excepted

The aforesaid instructions were all the instructions in the case whereupon the Court gave the case to the jury who returned a Verdict of Guilty, against the defendant Francis Wilson whereupon the defendant moved the Court for a new Trial Pending said motion and in Support thereof the defendant on the 29th day of November 1880 filed his affidavit, which reads in the words and figures following To wit,

" State of Minn. } In Magistrate's Court
 " In Queen County } of the November Term 1880
 " The People }
 " vs } Hugo of Bastard
 " Francis M. Wilson }

4/2

Francis M. Wilson the defendant in the above entitled
 cause being duly sworn deposes and Says - That
 Since the trial of the above entitled cause he has
 discovered as he is advised material evidence
 and which he truly believes would have been
 the means of his obtaining an acquittal and
 which he would have had then at the time
 of his trial had he known of its existence and
 had he anticipated that the girl would have
 sworn as she did - deponent says that he will
 be able to prove by the testimony of his mother
 Margaret Wilson that she occupied the dining
 room in the house where the said Francis
 claimed that Sexual intercourse took place
 from the fore part of October A.D. 1859 till
 far into the winter and during the first two
 or three periods of time when the girl swore
 that intercourse took place - His said mother
 being in that room then ^{being} ^{being} Sick - And
 deponent further Says that by the testimony
 of his said mother who resides in Ash Grove
 in this County he will be able to prove he
 expects that during the first two or three times
 when the girl swore intercourse took place
 that it could not possibly have been done
 there during the first two or three times stated
 without her knowledge and that it was
 not done - And she further expects to be

able to prove by his said mother that
at the time Wesley Harvey was committing his
present wife and before the child of the said
Mary Francis was born the said Francis repeatedly
said to Mrs Wilson that Harvey never
would marry the woman he was paying attention to
and that when the said Harvey was married the said Mary Francis cried and
looked on terribly and would not tell Mrs.
Wilson what she was crying about - The
deponent says he can obtain the testimony
of his said mother to these points if he can
obtain a rehearing of this cause - deponent
further says that he is not guilty of the charge
of being the father of the child of the
said Mary Francis - That he knows that injustice
was done him in finding him guilty of said
charge - That he believes that the verdict against
him was in a great measure owing to prejudice
and the outside influence that was brought
to bear against him on the trial - That he
is informed and truly believes that a
verdict of guilty would never have been
brought in against him had not one
at least of the jurors been unwell and
laboring under a misapprehension as
to a message the said juror supposed
to have been sent to the jury from

44

" the Court and which this defendant believes
 " the Court never could have sent - That he
 " is not unlawfully convicted and asks that
 " he may be afforded a fair opportunity of
 " again presenting this case to a jury of his
 " County

" Subscribed & sworn to before me this

Francis M. Wilson

" 29th day of November A.D. 1865

" Thomas Vennum Clerk

" Affidavit in Support of said motion on the
 " 29th day of November A.D. 1865 the def-
 " endant, caused to be filed the affidavit
 " of Daniel Lawrence which reads in the
 " words and figures following to-wit:

" State of Illinois } In Quois County
 " Quois County } of the November Term
 " A.D. 1865

" The People of the State of Illinois

" Francis M. Wilson

" Daniel Lawrence one of
 " the jurors who tried the above cause
 " being duly sworn deposes and says that
 " while with the balance of the panel of
 " jurors who tried said cause was out

" deliberating upon their Verdict after the Court
" had Commenced its Session after Supper and
" while they the jury were under the charge of
" Harmon Westbrook the officer sworn to take
" charge of them the said Westbrook brought
" two or three Mesages to them purporting to
" be brought from the Court in relation to the
" duty of the jury the last one of which
" this affiant understood to be in substance
" as follows "That a Verdict of the jury to
" disagree would not be accepted by the
" Court" and then added "that the jury
" would have to be all agreed before they
" could give in a Verdict and be discharged"
" This affiant supposed this whole message
" came from the Court and so thinking he being
" anxious to get discharged the Room being
" uncomfortable and ^{he} having a severe headache
" and fearing injurious consequences to his
" health if he remained there until late in
" the night to which time he supposed he
" would be kept if he did not agree he
" finally agreed on a Verdict under those
" circumstances which was against his judgment
" and his conscience - Supposing he was
" fulfilling a legal requirement of the Court
" in the way he understood said supposed
" Message he agreed at the time in order

46

" to be brought without further detention to sign
" the Verdict or the jurors would have agreed
" on the Verdict which he with the others agreed
" to against the above defendants

" Subscribed and sworn to before me this "Daniel Lawrence"
" 24th day of November A.D. 1865
" Thomas Munroe Clerk"

" And Whereupon on the 30th day of November
" A.D. 1865 the Counsel for the People filed
" the affidavit of Harmon Westbrook in opp-
" osition to said Motion which reads in the
" words and figures following to-wit"

The People of the
State of Illinois

vs
Francis W. Wilson

" State of Illinois }
" Dequois County } Dequois County Circuit Court
" Dequois County } for Term ad, 1865

" The People of the
" State of Illinois
" vs

" Francis W. Wilson

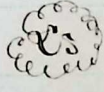
Charge of "Fetters"

" Harmon Westbrook being
" duly sworn on his oath said - That he
" was the officer who had charge of the jury

" who tried the above entitled cause when said
 " jury retired to consider of their Verdict -
 " That he has carefully read the affidavit
 " of Daniel Farrance one of the jurors who
 " tried said cause - That he had no com-
 " munication between the jury and the court,
 " only at the instance and request of the jury
 " only as delivered to him by the court and
 " that he carried no messages from the court to
 " the jury only as delivered to him by the court,
 " and as near as he could remember in the lan-
 " guage of the court, that he did not deliver
 " a message to said jury or any one of said jury
 " of the character averred by the said Daniel
 " Farrance or anything that ^{could} possibly be construed
 " to mean as by any fair construction as the
 " said Farrance avers. He further avers that
 " he was requested by said jury to inquire
 " of the court if the court would accept
 " of a verdict, that the said jury had agreed
 " to disagree that he carried said messages
 " to the court and returned to the jury the
 " reply of the judge which was that he
 " would not

" Subscribed and sworn to before me { H. Westbrook
 " this 20th day of November A.D. 1861
 " Thomas Kinnison Clerk

" And upon the 30th day of November A.D.
 " 1860 the Said Motion for a new Trial
 " coming on for a hearing the court overruled
 " the Said Motion and rendered judgment
 " upon the Verdict of the jury to all which
 " the defendant by his Counsel then and there
 " excepted and inasmuch as the several
 " matters aforesaid do not appear by the
 " Record of said Cause he prays the Court
 " to Sign and Seal this Bill of Exceptions
 " according to the Statutes in such cases
 " made and provided

" Charles R. Starn 
 " Judge of the 2d Judicial Circuit
 " of the State of Illinois

State of Illinois
 Proquois County SS.

I Thomas Vennart Clerk of the
 Circuit Court in and for said County in the
 State aforesaid do hereby certify that the
 above and foregoing is a true and complete
 and perfect Transcript of the Record of the
 proceedings of the Proquois County Circuit
 Court in the said cause entitled therein
 therein the People of the State of Illinois
 are Plaintiffs and Francis Wilson is def-
 endant - and also a true copy of all

the papers on file in this court, pertaining to or forming any part of the Record of this Court in this cause



In attestation of which I hereunto set my name and the Seal of the Circuit Court of Said Joquios County at office in Middleport in Said County this 15th day of 3rd day of January A.D. 1861

State of Illinois }
Joquios County }^{ss}

Thomas Kuumm Clerk

The People of the }
State of Illinois }
vs
Francis M. Wilson }

Action of Bastardy -

I Charles R. Starr Judge of the 20th Judicial Circuit of the State of Illinois do hereby certify that the above entitled cause was tried before me in the Joquios County Circuit Court, and that, as I believe, the foregoing record contains a full and true history of the proceedings on the trial thereof -

In witness whereof I have hereunto set my hand this 26th day of March A.D. 1861 -

Chas. R. Starr JS

And now comes the defendant
by Wood his Attorney and assigns
the following causes for Error on
the said record -

1st The court erred in allowing the People
to re-examine prosecuting witness to new
matter

2nd The court erred in making the giving
of the bond part of the Judgment of the
Court -

3 The verdict is against Evidence

4 The verdict & Judgment is contrary
to law -

5 The Jury were unlawfully tampered
with by messages from the Court -

6 The court erred in overruling motion
for a new trial on affidavit of newly
discovered evidence

7 The court erred in granting the
4th Instruction for the People -

8 The court erred in refusing the
4th instruction for defendant -

9 The court erred in overruling
motion for new trial and rendering
judgment against the defendant -

Charles H. Wood
for Pltff. in Error

Miles in error by
J. J. Price
State Atty

9. P. O. 1171
The People of the
State of Illinois
vs
Francis M. Wilson

Record

Filed April 5th 1861
A. Delmon
Clerk

\$10.00. Cts. Jus
for transcript

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Appellate Court for the County of Madison Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Appellate Court of Madison County, before the Judge thereof, between

The People of the State of Illinois

plaintiffs and Francis M. Wilson

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid Francis M. Wilson

as we are informed by his complainant..... and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 5th day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty one



Frederick Deland
Clerk of the Supreme Court.

By J. H. Deland Dyos

9 P.D.

Francis M. Wilson
No. vs.

*The People of the
State of Illinois*

WRIT OF ERROR.

Filed *April 5th* A. D. 1861

L. Deland
Clerk.



IN THE SUPREME COURT,

APRIL TERM, A. D. 1861.

FRANCIS M. WILSON,
Plaintiff in Error,
ADS.
THE PEOPLE OF THE STATE OF ILLINOIS,
Defendants in Error.

*Writ of Error to
Iroquois.*

This was an action of Bastardy, tried at the November term, A. D. 1860, of the Iroquois Circuit Court.

November 5th, 1860. Affidavit filed in the Circuit Court.

Rec. p. 2 STATE OF ILLINOIS, }
Iroquois County. } ss.

The complaint of Lucy Francis, of said County, an unmarried woman, made before William F. Keady, Esq., one of the Justices of the Peace in and for said County, under oath, who says, that on the 19th day of last July, A. D. 1860, at the residence of Curtis Orms, in Ash Grove, in the County aforesaid, she was delivered of a female bastard child, and that Francis Wilson, of Ash Grove, in said County, is the father of the said child.

3 Justice's warrant, in usual form.

4 Appeal bond from the Justice, in the usual form.

6 Justice's transcript, certified to the Circuit Court, showing that the defendant was bound over to answer the charge.

8 James Fletcher appointed State's Attorney to prosecute this case, November 22d, 1860.

10 Issue made of whether Francis Wilson is the father of a female bastard child of which Lucy Francis was delivered, on 19th day of July, 1860.

Defendant pleads not guilty.

Trial by jury. Verdict, that they find the defendant guilty.

11 Motion for a new trial.

12 Motion for new trial overruled, November 30th, 1860. Defendant excepted.

13 Judgment of the Court, that Francis Wilson do pay the sum of fifty dollars yearly, for seven years, for the support and maintenance of the said bastard child of the said Lucy Francis, together with costs.

Order to defendant to file bond in the sum of \$800, with County Judge, with James Wilson as security, conditioned for payment of judgment. Thirty days allowed to file bill of exceptions.

14 December 1st, 1860. Bond filed and approved; defendant discharged. December 27th, 1860, bill of exceptions filed.

15 BILL OF EXCEPTIONS.

Shows that Lucy Francis was sworn, and testified that she was an unmarried woman, and gave birth to a female child 19th July, 1860. That Francis Wilson was the father of it. Had been in Ash Grove about four years. Stopped first at home, at Curtis Orms'; then went to 16 Wilson's about a year; then to Mr. Willoughby's, and resided two weeks; then went a second time to Mr. Wilson's, and resided about two years; then, May 1st, 1859, went to Mr. Harvey's, and resided five months; then went direct to Mr. Wilson's again. Did house work at Harvey's; his wife was not living. Last fall first had intercourse with a man. It was with Francis Wilson. He is sixteen years old. He told me he would marry me. I didn't let him have intercourse the first time he 17 asked me. He asked me half a dozen times, probably.

18-20 Details six times that she was solicited before intercourse occurred in the dining room. I stated to no person but my mother, for four days after the child was born, whose child it was. I did not within six days, nor any other time. I signed a paper within six days after, saying that it was not Francis Wilson's child. I did state to John B. Clark that the child was not Francis Wilson's; it was within four days I stated that.

22 I never told Edward Wilson, under the promise of privacy, that the child was Wesley Harvey's; I never told him any such thing. I never told him that just before I left Mr. Harvey's, he came and got into bed with me.

23 The plaintiff then proposed to re-examine the witness as to whether intercourse took place subsequent to the time about which she had been examined. Defendant objected. Objection overruled, and defendant excepted. Witness then stated that defendant had had intercourse some half a dozen times, and that Francis had threatened to penitentiary her in case she did not clear him of the charge. Francis didn't state that
24 there was a rumor around that he was the father of the child, and that if I swore to a lie it would penitentiary me. Francis said that there was a report that he was the father of the child. And he also said if I swore false it would penitentiary me.

25 Details subsequent interviews, and all in the dining room. Was sure that Mrs. Wilson did not occupy the lounge there.

26 Nancy Orms sworn, and testified that the child was born 19th July, 1860. She was at Harvey's from the first of May, 1859, till the 2d of October after; then went to Wilson's, and staid till July 15th, 1860.

27 Melissa Francis testified to Francis telling Lucy that she was a nice girl, and threatened to penitentiary her if she did not clear him. Did not hear distinctly all that was said. Harvey came two days after the child was born, and wanted to know if Lucy swore the child on to him. He came again in about a week and a half.

29 John B. Clark sworn on the part of the defendant. I went to Mr. Orms' house some time in July last. Edward Wilson went with me. I had an affidavit written out, exonerating Francis Wilson from being the father of the child. She said she was willing to sign the affidavit and be qualified to it. She signed it and I qualified her to it:

STATE OF ILLINOIS, }
Iroquois County. } ss.

Before me, John B. Clark, a Justice of the Peace, personally came Lucy Francis, who being by me duly sworn, deposeth and saith, that the child of which she was lately delivered does not belong to Francis M. Wilson.

30 Signed and sworn to July 24th, 1860.

She seemed calm and quiet. She had some conversation with Mr. Edward Wilson. He told her that he was friendly to her, and if his brother was guilty he did not wish her to exculpate him. She signed the affidavit voluntarily, and I swore her to it.

John H. Stidham testified that he visited Lucy Francis, and that he cautioned her as to what she might talk about the matter, and advised her to send for the father of the child, and settle with him privately. She then told me it was not Frank's child, and that she never said it was. Edward Wilson said, since you have cleared Frank, would you have any objection if we brought Squire Clark here and have him take your affidavit to that effect. She said "No." She understood herself at the time, and had the possession of her faculties, if I am any judge.

Edward Wilson and I went out and left Francis in with Lucy awhile, and I think this conversation occurred after we went in.

Edward Wilson testified to about the same as Esq. Stidham, and then goes on to say, that after Stidham had left, he had a long conversation with Lucy, and she told him that the child was Wesley Harvey's. Mrs. Orm told Lucy the next day that she didn't want any more of her lying. I told her not to sign the affidavit unless it was true. My mother occupied the dining room from the sixth or eighth of October till about the 20th of that month.

Wesley Harvey swore that he never had had sexual intercourse with Lucy Francis.

Bill of exceptions contains all the evidence.

The Court gave the following instruction for the People:

That if the jury believe from the evidence that the People have proven the child of Lucy Francis to be the child of Francis Wilson, and that the defendant, Francis, has failed to show by evidence that such is not the fact, then the law is for the plaintiff, the People.

To the giving of which instruction the defendant excepted.

The Court refused to give the following instruction, to which the defendant excepted:

The jury are further instructed, that the defendant is not bound to prove that Wesley Harvey, or anybody else, is the father of the child, and if the jury believe from the evidence that Francis Wilson had sexual intercourse with Lucy Francis, and also that any other person had sexual intercourse with her, within the period of the duration of pregnancy immediately prior to her delivery, then they must be satisfied beyond a reasonable doubt that the evidence for the prosecution excludes the probability of that other person being the real father of the child, else the law is for the defendant.

John H. Stidham testified that he visited Lucy Francis, and that he cautioned her as to what she might talk about the matter, and advised her to send for the father of the child, and settle with him privately. She then told me it was not Frank's child, and that she never said it was. Edward Wilson said, since you have cleared Frank, would you have any objection if we brought Squire Clark here and have him take your affidavit to that effect. She said "No." She understood herself at the time, and had the possession of her faculties, if I am any judge.

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That if the jury believe from the evidence that the People have proven the child of Lucy Francis to be the child of Francis Wilson, and that the defendant, Francis, has failed to show by evidence that such is not the fact, then the law is for the plaintiff, the People.

To the giving of which instruction the defendant excepted.

The Court refused to give the following instruction, to which the defendant excepted:

The jury are further instructed, that the defendant is not bound to prove that Wesley Harvey, or anybody else, is the father of the child, and if the jury believe from the evidence that Francis Wilson had sexual intercourse with Lucy Francis, and also that any other person had sexual intercourse with her, within the period of the duration of pregnancy immediately prior to her delivery, then they must be satisfied beyond a reasonable doubt that the evidence for the prosecution excludes the probability of that other person being the real father of the child, else the law is for the defendant.

41 Affidavit of defendant, showing that he can prove by his mother,
42 who occupied the dining room at the time the girl swore intercourse took
place, she being then sick there, that it could not possibly have been
done. And that he could not foresee that the girl would have sworn so
as to render this testimony necessary.

44 Affidavit of juror, Daniel Lawrence, that the Court sent two or three
messages to them in relation to their duty, the last one of which was,
45 "That a verdict of the jury to disagree would not be accepted by the
Court," and then added, "that the jury would have to be all agreed
before they could give in a verdict and be discharged;" which induced
affiant to agree to a verdict against his conscience, and supposing he was
complying with a legal requirement of the Court, else he would not have
done so.

47 Affidavit of Westbrook does not controvert affidavit of Lawrence.

48 Defendant excepts to overruling motion for a new trial.

ERRORS ASSIGNED.

The Court erred in allowing the prosecuting witness to examine to
new matter.

The Court erred in making the giving of the bond part of the
judgment of the Court.

The verdict is against the evidence.

The verdict and judgment are contrary to law.

The jury were unlawfully tampered with by messages from the Court.

The Court erred in overruling motion for a new trial on affidavit
of new discovered evidence.

The Court erred in granting the 4th instruction for the People.

The Court erred in refusing the 4th instruction for defendant.

The Court erred in overruling motion for a new trial, and rendering
judgment against the defendant.

9 PD
Francis M. Wilson
Pltff. in Error
vs
The People

Abstracts

Filed Apr. 25-1861.

G. Leland
Clerk

Supreme Court of the State of Illinois
April Term A.D. 1860

Francis M. Willson }
vs } Error to Disprove
The People &c }

Points & authorities
submitted by Deft in Error

It was not error to allow the
re examination of the witness
as to the new matter but a
matter of discretion with the
Court & Binney ^{9 Scan 488} 488-44 Wend
248. 6 Wend 268-8 Cen-65- This
is not a criminal case, for if
it is the defendant must be
indicted art 18 Sec. 10 State Court
and the rules need not be
adhered to as strictly as in cases
of that nature

Although the statute does
not require that the giving of
the bond shall be made part
of the judgement, yet it
requires the bond to be given
(Bastardy act Sec 5) and that

and that he did not want her to
violate her conscience in any thing
she said or did, nor to tell him
any of her secrets and then
cruelly asks if she would have
any objection to their sending
for a magistrate and taking her
affidavit that the defendant
was not the father of her child
and this too while her friends
were all absent - for the villainous
purposes of entrapping and
perjuring an unprotected weak
and unfortunate girl. It is
not strange that the evidence
should show as ~~they~~ ~~see~~ it does
that she was restless and slept
none the following night

The evidence does not even
tend to show, and it is not
pretended, that she had
intercourse with any person
other than the defendant &
Harvey. The time between
the birth and the day of when
she left Harvey & Haro had
an opportunity for intercourse
with him, is greater than the

period of pregnancy but who
places the matter beyond doubt
is, that Harvey swears absolutely
and unequivocally that he
never had intercourse with her.
The abstract does not set out
the evidence set out the
evidence fully, but omits a large
which is important for the
people

The affidavit of newly
discovered evidence in support
of the motion for a new trial,
is not ~~show~~ sufficient

It does not show sufficient
diligence - the evidence is
cumulative - one witness testifying
to the same thing on the trial
and it goes to impeach the
prosecution 14 Ill 141

The jury were not improperly
communicated with by the court
They were called and each
answered that it was his
verdict, The affidavit of the
jury shows that he did not
deliver the message mentioned

in the ~~jurors~~ affidavit, and that
he was requested by the jury to
inquire of the court if the
court would accept of a verdict
that the jury had agreed to disagree
which he did and returned to them
the answer of the court which
was that he would not.

Affidavits of jurors cannot be
received to impeach their verdict
or explain the grounds of it

3 Sam, 81

The fourth instruction asked
by the defendant was properly
refused because it assumes
that if any person besides the
defendant had intercourse with
the prosecutrix during pregnancy
there is a probability that that
person was the father of even
if he had had but one connection
and that connection only one hour
before the birth - and because
it requires the jury to be
satisfied beyond a reasonable doubt
this not being a criminal
prosecution. Off Jones
States Attorney

Wilson
no 9-P.D.
The People

Points & Authorities
for Depts in Error

Filed May 4-1861.

L. Leland
Chick

Supreme Court of the State of Illinois
April Term A.D. 1861

Francis M. Willson

vs

The People &c

Points and authorities
submitted by Deft in Error

It was not error to allow the
re examination of the witnesses
as to the ^{new} matter, but a matter
of discretion with the Court
5 Binney 488 - 4 Wend 249 (Wend)
268 - 1 Conn. 63. This is not a
criminal case for if it be, the
defendant must be indicted and is
Sec. 10 State Court - and the rules
need not adhere to as strictly
as in cases of that nature

Although the statute does
not require that the giving of
the bond shall be made part
of the judgment, yet, it requires
the bond to be given (Bastardy act
Sec. 5) and that being made
part of the judgment would

not prejudice or effect the dependent's
rights and therefore would not
what it is ^{merely} ~~sharply~~ surplussage

The testimony was amply sufficient
to authorize the judgement.

There is no conflict except so far as
the affidavit is concerned, that was
obtained four days after the
confinement of prosecuting - a girl
of eighteen years - while she was weak
and feeble - under the influence of fear
caused by the threats of the defendant
"that if she did not clear him he
would penitentiary her" - of
flattery and ~~assumed~~ ^{assumed} friendship
whispered in her ears by the
specious tongue of the witness
Stidhorn, who tells her that
she was always an amiable and
honest girl and a model for
others, that although unfortunate
she would always have friends
and that he did not want
her to violate her conscience in
any thing she said or did, nor
to tell him any of her secrets -
and then coolly asks if she
would have any objection to

then sending for a magistrate
and taking her affidavit that
the defendant ^{was} ~~not~~ the father
of her child, and all ~~absent~~
this too while all her friends were
absent for the villainous purpose
of entrepping and securing an unprotected
weak and unfortunate girl, It is
not strange that the evidence
should show, as it does, that she
was restless and slept none the
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The evidence does not even
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the ~~gestation~~ period of pregnancy
but what places the matter
beyond doubt is, that Harvey
swears absolutely & unequivocally
that he never had intercourse
with her

The abstract does not set out the evidence fully, but omits a large part which is important for the people

The affidavit of newly discovered evidence ~~is~~ in support of the motion for a new trial, is not sufficient. It does not show sufficient diligence - the evidence is cumulative - one witness testifying to the same thing on the trial - and it goes to and it goes to impeach the prosecuting 14 Ill 141

The jury were not improperly communicated with by the court. They were polled and each answered that it was his verdict. The affidavit of the officer in charge of the jury shows that he did not deliver the message mentioned in the juror's affidavit, but that he was requested by the jury to inquire of the court if the court would accept of a verdict that the jury

had agreed to disagree which he
which he did and returned to
them the answer of the court
which was that he would not
the affidavits of persons cannot be
received to impeach their verdict
or explain the grounds of it
I Seamy 81

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had but one connection
and that one only an hour
before the birth - and because
it requires the jury to be
satisfied beyond a ^{reasonable} doubt - this
not being a criminal prosecution

D. P. Jones

State's attorney

Milson
as
9-P.D.
the People

Points & Authorities
for Deft in Error

Filed May 4-1861

L. Leland
Clerk

IN THE SUPREME COURT,

APRIL TERM, A. D. 1861.

FRANCIS M. WILSON,
Plaintiff in Error,
ADS.
THE PEOPLE OF THE STATE OF ILLINOIS,
Defendants in Error.

*Writ of Error to
Iroquois.*

This was an action of Bastardy, tried at the November term, A. D. 1860, of the Iroquois Circuit Court.

November 5th, 1860. Affidavit filed in the Circuit Court.

Rec. p. 2 STATE OF ILLINOIS, } ss.
Iroquois County.

The complaint of Lucy Francis, of said County, an unmarried woman, made before William F. Keady, Esq., one of the Justices of the Peace in and for said County, under oath, who says, that on the 19th day of last July, A. D. 1860, at the residence of Curtis Orms, in Ash Grove, in the County aforesaid, she was delivered of a female bastard child, and that Francis Wilson, of Ash Grove, in said County, is the father of the said child.

3 Justice's warrant, in usual form.

4 Appeal bond from the Justice, in the usual form.

6 Justice's transcript, certified to the Circuit Court, showing that the defendant was bound over to answer the charge.

8 James Fletcher appointed State's Attorney to prosecute this case, November 22d, 1860.

10 Issue made of whether Francis Wilson is the father of a female bastard child of which Lucy Francis was delivered, on 19th day of July, 1860.

Defendant pleads not guilty.

Trial by jury. Verdict, that they find the defendant guilty.

11 Motion for a new trial.

12 Motion for new trial overruled, November 30th, 1860. Defendant excepted.

13 Judgment of the Court, that Francis Wilson do pay the sum of fifty dollars yearly, for seven years, for the support and maintenance of the said bastard child of the said Lucy Francis, together with costs.

Order to defendant to file bond in the sum of \$800, with County Judge, with James Wilson as security, conditioned for payment of judgment. Thirty days allowed to file bill of exceptions.

14 December 1st, 1860. Bond filed and approved; defendant discharged. December 27th, 1860, bill of exceptions filed.

15 BILL OF EXCEPTIONS.

Shows that Lucy Francis was sworn, and testified that she was an unmarried woman, and gave birth to a female child 19th July, 1860. That Francis Wilson was the father of it. Had been in Ash Grove about four years. Stopped first at home, at Curtis Orms'; then went to 16 Wilson's about a year; then to Mr. Willoughby's, and resided two weeks; then went a second time to Mr. Wilson's, and resided about two years; then, May 1st, 1859, went to Mr. Harvey's, and resided five months; then went direct to Mr. Wilson's again. Did house work at Harvey's; his wife was not living. Last fall first had intercourse with a man. It was with Francis Wilson. He is sixteen years old. He told me he would marry me. I didn't let him have intercourse the first time he 17 asked me. He asked me half a dozen times, probably.

18-20 Details six times that she was solicited before intercourse occurred in the dining room. I stated to no person but my mother, for four days after the child was born, whose child it was. I did not within six days, nor any other time. I signed a paper within six days after, saying that it was not Francis Wilson's child. I did state to John B. Clark that the child was not Francis Wilson's; it was within four days I stated that.

22 I never told Edward Wilson, under the promise of privacy, that the child was Wesley Harvey's; I never told him any such thing. I never told him that just before I left Mr. Harvey's, he came and got into bed with me.

23 The plaintiff then proposed to re-examine the witness as to whether intercourse took place subsequent to the time about which she had been examined. Defendant objected. Objection overruled, and defendant excepted. Witness then stated that defendant had had intercourse some half a dozen times, and that Francis had threatened to penitentiary her in case she did not clear him of the charge. Francis didn't state that
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25 Details subsequent interviews, and all in the dining room. Was sure that Mrs. Wilson did not occupy the lounge there.

26 Nancy Orms sworn, and testified that the child was born 19th July, 1860. She was at Harvey's from the first of May, 1859, till the 2d of October after; then went to Wilson's, and staid till July 15th, 1860.

27 Melissa Francis testified to Francis telling Lucy that she was a nice girl, and threatened to penitentiary her if she did not clear him. Did not hear distinctly all that was said. Harvey came two days after the child was born, and wanted to know if Lucy swore the child on to him. He came again in about a week and a half.

29 John B. Clark sworn on the part of the defendant. I went to Mr. Orms' house some time in July last. Edward Wilson went with me. I had an affidavit written out, exonerating Francis Wilson from being the father of the child. She said she was willing to sign the affidavit and be qualified to it. She signed it and I qualified her to it:

STATE OF ILLINOIS, }
Tiroquois County. } ss.

Before me, John B. Clark, a Justice of the Peace, personally came Lucy Francis, who being by me duly sworn, deposeth and saith, that the child of which she was lately delivered does not belong to Francis M. Wilson.

30 Signed and sworn to July 24th, 1860.

She seemed calm and quiet. She had some conversation with Mr. Edward Wilson. He told her that he was friendly to her, and if his brother was guilty he did not wish her to exculpate him. She signed the affidavit voluntarily, and I swore her to it.

John H. Stidham testified that he visited Lucy Francis, and that he cautioned her as to what she might talk about the matter, and advised her to send for the father of the child, and settle with him privately.
31 She then told me it was not Frank's child, and that she never said it was. Edward Wilson said, since you have cleared Frank, would you have any objection if we brought Squire Clark here and have him take your affidavit to that effect. She said "No." She understood herself at the time, and had the possession of her faculties, if I am any judge.

32 Edward Wilson and I went out and left Francis in with Lucy awhile, and I think this conversation occurred after we went in.

Edward Wilson testified to about the same as Esq. Stidham, and
34 then goes on to say, that after Stidham had left, he had a long conversation with Lucy, and she told him that the child was Wesley Harvey's. Mrs. Orm told Lucy the next day that she didn't want any more of her
35 lying. I told her not to sign the affidavit unless it was true. My mother occupied the dining room from the sixth or eighth of October till about the 20th of that month.

37 Wesley Harvey swore that he never had had sexual intercourse with Lucy Francis.

Bill of exceptions contains all the evidence.

The Court gave the following instruction for the People:

That if the jury believe from the evidence that the People have proven the child of Lucy Francis to be the child of Francis Wilson, and that the defendant, Francis, has failed to show by evidence that such is
38 not the fact, then the law is for the plaintiff, the People.

To the giving of which instruction the defendant excepted.

40 The Court refused to give the following instruction, to which the defendant excepted:

The jury are further instructed, that the defendant is not bound to prove that Wesley Harvey, or anybody else, is the father of the child, and if the jury believe from the evidence that Francis Wilson had sexual intercourse with Lucy Francis, and also that any other person had sexual intercourse with her, within the period of the duration of pregnancy immediately prior to her delivery, then they must be satisfied beyond a reasonable doubt that the evidence for the prosecution excludes the probability of that other person being the real father of the child, else the law is for the defendant.

41 Affidavit of defendant, showing that he can prove by his mother,
42 who occupied the dining room at the time the girl swore intercourse took
place, she being then sick there, that it could not possibly have been
done. And that he could not foresee that the girl would have sworn so
as to render this testimony necessary.

44 Affidavit of juror, Daniel Lawrence, that the Court sent two or three
messages to them in relation to their duty, the last one of which was,
45 "That a verdict of the jury to disagree would not be accepted by the
Court," and then added, "that the jury would have to be all agreed
before they could give in a verdict and be discharged;" which induced
affiant to agree to a verdict against his conscience, and supposing he was
complying with a legal requirement of the Court, else he would not have
done so.

47 Affidavit of Westbrook does not controvert affidavit of Lawrence.

48 Defendant excepts to overruling motion for a new trial.

ERRORS ASSIGNED.

The Court erred in allowing the prosecuting witness to examine to
new matter.

The Court erred in making the giving of the bond part of the
judgment of the Court.

The verdict is against the evidence.

The verdict and judgment are contrary to law.

The jury were unlawfully tampered with by messages from the Court.

The Court erred in overruling motion for a new trial on affidavit
of new discovered evidence.

The Court erred in granting the 4th instruction for the People.

The Court erred in refusing the 4th instruction for defendant.

The Court erred in overruling motion for a new trial, and rendering
judgment against the defendant.

9 P.D.
Francis M. Wilson
Pltff. in Error
vs

The People

Abstracts

Filed Apr. 25-1861

L. Leland
Clerk