

In Supreme Court, Ottawa, April Term, 1862.

THE PEOPLE OF THE STATE OF ILLINOIS ON

COMPLAINT OF ANN M. PRIDE,

VS.

PETER KELLY.

Complaint for Bastardy.

APPEAL FROM PEORIA.

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Record.

1 and 2

On the 3d day of August, A. D., 1860, Ann M. Pride, complained of Peter Kelly, before a Justice of the Peace, for being the father of a child of which she was delivered about the 26th of May, 1860.

Kelly was arrested and gave bonds to appear at the Circuit Court for trial.

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At the June term, 1861, being a CRIMINAL TERM of said court, and by law devoted exclusively to such business, Kelly appeared, and his counsel then and there objected to the court taking cognizance of, or proceeding to try said cause, at said term, for want of jurisdiction. The court overruled the objection, and ordered the trial to proceed, and the defendant excepted, &c.

7 and 8

An issue was formed, and a trial had before a jury, as to whether the defendant was the father of the child; the jury found against the defendant.

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A motion was made by defendant for a new trial, and in arrest of

judgment, for the following reasons:

- 1st. Because the complaint is insufficient.
- 2d. Because the verdict is against law and evidence and the instructions of the court.
- 3d. Because the court had not authority to try the cause at a criminal term.
- 4th. Because the court misdirected the jury in matters of law, at the request of the people.
- 5th. Because there is no existing law under which the defendant can have judgment passed upon him on this verdict.

The court overruled the motions, and ordered defendant to pay for the support of the child until it should arrive at the age of seven years, fifty dollars per year, commencing on the 26th May, 1860, and that he should give bond to pay the same quarter yearly to the Judge of the Court of Probate of Peoria county, or his successor, &c., as provided by the act of March 3, 1845.

The defendant prayed an appeal to the Supreme Court, which was allowed.

The bill of exceptions contains all the evidence.

The prosecution testified as follows: "I know Peter Kelly; I guess I have known him about a year; I am not married; I have always been single; I have given birth to a boy baby; it was born on the 26th May, 1860; Peter Kelly was the father of the child, and nobody else; I believe I could identify him; where is he? if he would come here I would take hold of him; he knows he is the father of the child; I want to give him a piece of my mind; Peter Kelly was living at our house at the time the baby was begotten; the school marm was boarding there too; my mother is dead; Kelly lived there about a year; the child is still living; the child was begotten and born in Peoria county.

On cross examination she stated:

I do not know how long I have lived in this state; I lived in the state of Pulaski before I came here; I can't tell how long I lived in that state; I did not know Peter Kelly then; I said I had known Peter

14 Kelly a year; didn't I say so? the child was born the 26th of May, 1860; I can't tell what time the child was begotten; it was in the spring in blackberry time, in the month of August; the child was begotten more than one time; Kelly had connection with me twice; the first time it was in May in the kitchen; the next time it was out in the bushes 3 or 4 months after; we went out there to take a walk; we went after blackberries then; we got some; I took a dish to get them in; it was a tin dish, of course; I did not get it full; we staid about half an hour; it was Sunday; I had connection with him between these times; I don't know how many times; a good many; I don't know where; up stairs or somewhere else; he used me mean the first time; took advantage of me when the folks were all gone away from home; he used me mean every time; I don't know anything when the child was begotten; last time he ever had connection with me was the time out in the bushes; he didn't do anything to me after that time, August, 1859; Peter left our house in March, 1860, and got married the next week after; there were 5 rooms in the house, 3 below and two up stairs; I had connection with him in the night up stairs; I went up stairs to go to bed; had to go through his room; had connection with him there every once and a while; I did not go to bed to him; do you think I would go to bed to him?

15 I never talked with anybody about this matter since last trial; never talked with anybody on the subject; on the last trial I did say on that trial that it was in the month of April in blackberry time that he had connection with me; I have thought it over since, and it was in August; I was confused then, and did not know what I did say; April comes before August; June is the first month in the year; July is the next, and September is the last month; they don't come that way every year; they change sometimes in leap year; I don't remember whether 1849 was leap year or not; there are 30 weeks in a year; I am 31 years old; I cannot tell how many years I have lived in this state; I have been sworn in a court twice before; once in February, 1860; this was after the child was born; the child was born in May, 1860; the first time I was sworn was at Mr. Wiley's in 1860; I don't know the month; I was sworn here in February, 1860; I cannot tell the meaning of an oath; I don't know that I can tell what it means; I have heard something about a God; I think I am acquainted with him; I don't know how long it is since I made his acquaintance; I don't know as I have seen him; I had no conversation in particular with him that I know of; I don't know what perjury means; I don't know what you (the counsel) mean if you say, I

will be punished for perjury ; no person other than Peter Kelly ever had any connection with me in the world.

Here, in answer to inquiries put by the court, the witness testified : That she had read the Bible ; that when we died we would go to heaven ; that what we must do to go to heaven was to do right ; that if we didn't do right we would go to hell ; that if she did not tell the truth under oath she would be punished by God ; but that she did not know that she would be punished in any other way.

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Ezra A. Pride, called by the people, stated : I am a brother to Ann M. Pride ; we came to Illinois in 1852, and to Peoria County 5 years ago this spring ; my mother died in this county in the fall of 1858 ; I know Peter Kelly ; he lived at my father's house about a year ; from the 1st of April, 1859, to April, 1860 ; he was unmarried at the time, and boarded in father's family ; he slept with me sometimes, and sometimes in the kitchen on a lounge ; I am married ; I was married in October, 1859, and live in Akron township ; my father and sister live with me now ; I think I saw Peter Kelly wait on my sister frequently ; they went to meeting together, and he took her out riding sometimes ; the family was gone and they were left alone ; she had a child the 26th May, 1860.

On cross examination he stated : I know of his going out riding with her once in the fall of 1859 ; don't remember where they went, how long they were gone, or when they returned ; and he once went and brought her home from Alva Dunlap's ; I have seen them sitting on the lounge and on his bed together frequently ; late at night I have sometimes seen him lay his head on her lap ; sometimes when I had been sparking the school marm down below, I would go up stairs to go to bed, and find Peter Kelly and my sister sitting on the bed together ; I married the school marm ; some other young men were after her, but it seems I was a little too smart for them ; during the time Kelly was there, there were other young men called there often on Sundays, sometimes at other times ; there were Mr. Keach and Mr. Cline ; but they all appeared to be after the school marm ; did not appear to pay much attention to my sister, except just to say how DE DO ? &c. ; she appeared bashful, didn't use to say much ; some of these young men sometimes stayed all night.

Errors Assigned.

1. Trying the cause at a criminal term.
2. Instructing the jury as requested by the prosecution.
3. Overruling defendant's motion for new trial.
4. Entering judgment on the verdict as entered by the court.
5. Entering judgment on the verdict after the repeal of the law punishing the offence.
6. Overruling the demurrer to the complaint.

Points, Brief and Authorities.

1st. The verdict is against the evidence.

There is no evidence tending to prove that defendant is the father of the child except that of the prosecuting witness. No reliance whatever can be placed on her statements. She is a fool—having no idea of the nature of an oath, the existence of a God, or a future state.

2d. The law under which the penalty was imposed was repealed by the act in force, April 24, 1861. Laws 1861, p. 171.

The issue was made up in June, 1861, after this law took effect. This issue is made up under the 2d Sec., 16th Chap., Revised Statute, 1845. This law then provided that when such issue is made and found against the reputed father, he shall be condemned to pay not exceeding \$100 00 for the first year, and \$50 00 per year for nine years thereafter. This penalty applied to all cases where the issue is made after the passage of the law. The courts can impose no other. The imposition of a particular penalty necessarily excludes all other penalties.

3d. Neither is the defendant liable to the penalty imposed by the act of April 24th, 1861.

The offence (if any) had been committed previous to the passage of

the law, and if intended to apply, it would be clearly *EX POST FACTO* in its character.

4th. The judgment of the court is wrong in providing that the seven years of payments should commence on the 26th May, 1860, the date of the birth of the child. It should have commenced from the date of the judgment.—Purple's Stat., Sec. 5, p. 128.

N. H. PURPLE,

Attorney for Appellant.

4 People Exp⁵ ^{P. D.}
Ann M. Sturges

²⁴
Peter Kelley

Abstract, Brief
& Points

Filed Apr. 25 - 1862

L. Leland

Clerk