Page 1

The People of the State of Illinois,
By the Grace of God free and Independent, To all
to whom these presents may come Greeting:

Know Ye that we having caused to be inspected
the Records and proceedings now remaining in the
office of our Clerk of our Circuit Court in and for our
County of Will, do find there certain records in words
and figures following, (To-wit)

"State of Illinois,
Will County Circuit Court
March Term, AD 1855

United States of America
State of Illinois } S.S.
Will County }

Pleas before the Honorable
Sylvester W. Rendall, Judge of
the Eleventh Judicial Circuit of the State of Illinois
at the March Term of the Will County Circuit Court
began and held at the Court House in the City of
Joliet in said Will County on the Second Monday of
March (the same being the twelfth day of said month
of March) in the year of our Lord one thousand eight
hundred and fifty-five and of the year of the Indepen-
dence of the said United States the eighteenth:

Present Hon. Sylvester W. Rendall Judge of the Eleventh Judicial Circuit
Sherman W. Bowen States Attorney of the 11th Jud. Circuit

[2297-1]

Perry P. Hamilt Sheriff of Will County
Royal E. Barber Clerk of Will County Circuit Court

And thereupon the said Sheriff upon proclamation made, returned into Court the writ of Venire Facias heretofore directed to him under the seal of the County Court of said Will County as personally served upon the following named persons, to-wit: D. W. Croskey, Thomas F. Sprague, Alva Culver, Lyman Foster, Joel C. Mills, Aaron Hopkins, A. G. Rowley, John McCoy, Asa McDonald, William Blaisdell, George B. Davis, Henry Watkins, Edwered Robbins, John Young, Silas Beardsley, C. N. Merrian, Hiram B. Putnam, William McGinnis, A. H. Warner, John Kahler, William Strong, Zebina Henderson, Abijah Cagwin, personally to be and appear before the Circuit Court of said County to be holden at the Court House in the City of Joliet in said County on the Second Monday of March, (being the 12th day of said month of March) A.D. 1855 at or before the hour of Eleven o'clock in the forenoon of that day to serve as Grand Jurors. Whereupon the said Jurors were ordered to be called, and the following named persons answered to their names, and gave their attendance, (to-wit) D. W. Croskey, Lyman Foster, Joel C. Mills, A. G. Rowley, John McCoy, Asa McDonald, William Blaisdell, George B. Davis, Edwered Robbins, John Young, C. N. Merrian, William McGinnis, & Zebina Henderson, And Thomas F. Sprague, Alva Culver, Aaron Hopkins, Henry Watkins, Silas

3

Beardsley, Hiram B. Putnam, A. H. Warner, John Kahler, William Strong & Abijah Cagwin for good cause shown to the Court were respectively excused from serving on said Jury. There not being a sufficient number of qualified persons present by reason of the excuses aforesaid to constitute a full panel Grand Jury, the said Sheriff was ordered to summon from the bystanders ten like good and lawful men of said County to serve for that purpose. Who thereupon summoned John Thornburgh, George Geddes, Peter Macowen Joseph Reece Isaac Scarritt, L. L. Adams, R. F. Bentlett, John Collins, James Curtis & M. L. Rulow, who on being called severally answered to their names and gave their attendance, And thereupon Asa McDonald of the said panel was by the Court appointed Foreman of the said Grand Jury who with each and all of the said Grand Jurors were duly sworn according to law and entered upon the discharge of their duties under charge of an officer of the Court."

And afterwards, (to-wit) on the seventeenth day of March in the year of our Lord one thousand eight hundred and fifty-five. it also being one of the regular days of said March Term of said Court for the said year 1855 aforesaid, and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following (to-wit)

[12297-2]

"The People of the State of Illinois
vs
Patrick Kelly } Indictment, Assault with deadly weapon &c

"And The People of the State of Illinois
83 vs.
John Bergen. } Indictment for committing adultery &c upon his daughter.

"And The People of the State of Illinois
vs.
Patrick McCarta } Indictment for selling liquor &c without licenses

"And The People of the State of Illinois
vs.
Francis Petit } Indictment for selling liquor &c without license,

"And The People of the State of Illinois
vs.
Nathan Smith } Indictment for taking illegal fees as a constable

"And The People of the State of Illinois
vs.
Nathaniel Stevens } Indictment for obtaining goods under false pretences

And now come the said Grand Jury into open Court and present "A True Bill" against the above named respective defendants in the above entitled causes respectively for the offence therein respectively set forth," Which said Indictment No 83 against John Bergen defendant is in words and figures following, to wit,

State of Illinois } In the March Term of the Will County
Will County } Circuit Court, in the year of our Lord one thousand eight hundred and fifty five.

3v

The Grand Jurors chosen selected and sworn in and for the County of Will in the name and by the authority of the people of the State of Illinois upon their oaths present that John Bergen late of said County of Will on the tenth day of January in the year of our Lord one thousand eight hundred and fifty five at and within the County of Will and State of Illinois aforesaid unlawfully knowingly and feloniously did commit adultery and fornication upon the person of Phebe R Bergen the said Phebe R Bergen then & there being the daughter of him the said John Bergen, contrary to the form of the statute in such case made and provided and against the Peace and dignity of the same people of the State of Illinois.

Sherman W Bowen, States Attorney
of the Eleventh Judicial Circuit.

Which said Indictment was endorsed on the back thereof as follows, to wit,

"March Term of the Will County Circuit Court 1855

The People of the State of Illinois
vs
John Bergen } Indictment for committing adultery &c upon his daughter

A true Bill A W McDonald
Foreman of the Grand Jury

Witnesses Phebe R Bergen Pearl G Washburn
Sarah E Bergen Geo. H. Woodruff L. H. Loss

S W Bowen States Attorney

[12291-3]

And afterwards (to-wit) on the Twenty-second day of March in the year of our Lord one thousand eight hundred and fifty five, it also being one of the regular days of said March Term of said Court for the said year 1855 aforesaid and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following: (to-wit)

"The People of the State of Illinois
83 vs
John Bergen

Indictment for Committing Adultery upon his daughter

And now comes S. W. Bonner States Attorney. And said defendant also comes in his own proper person as well as by E. B. Gillaw his Attorney and enters his motion to quash the said indictment herein. And said States Attorney enters his motion that said defendant be recognized to next Term. And that this suit by agreement be continued. Whereupon it is ordered by the Court that the said defendant be held in Recognizance in this suit in the sum of Twelve Hundred Dollars. And by agreement of said States Attorney and on motion of said defendant it is ordered that the said defendant be discharged upon his own Recognizance without security. Thereupon. Be it Remembered that on this Twenty second day of March in the year of our Lord one thousand Eight Hundred and Fifty five personally came into open Court said John Bergen and acknowledged himself to owe and be indebted to the People of the State of Illinois for the use of the

7

"Inhabitants of the County of Will in the sum of
Twelve Hundred dollars lawful money of the United
States to be levied and made of his goods and Chattles
lands and Tenements if default be made in the following
Condition which is that if the said John Bergen shall
personally be and appear before the Circuit Court of
Will County in the State of Illinois on the first day
of the next Term thereof to be holden at the Court House
in Joliet in said County and State aforesaid on the
first Monday of September next then and there to
Answer the People of the State of Illinois Concerning
a certain Indictment preferred against him by the
Grand Jury of said Will County at the present March
Term A.D, 1855 of this Will County Circuit Court against
him said John Bergen And now pending and
undetermined in the said Circuit Court for the
Crime of Committing Adultery &c upon his daughter
and shall then and there remain in Continual
Attendance upon the said Court from day to day
until this suit shall be disposed of. And shall
not depart thence without leave of the said Court
And shall abide by and perform the order and
Judgment of the said Court in the premises. Then
and in that Case this Recognizance to be Null and
void otherwise to be and remain in full force and
effect. And with this the said John Bergen Expressed
himself to be Content which by order of the Court
is entered of Record. And said States Attorney

[12297-4]

8

" enters his motion for Recognizance of said Witnesses herein. Whereupon it is ordered by the Court that said Witnesses in this Cause be Recognized in the Sum of Fifty Dollars Each. Thereupon Be it Remembered that on this Twenty Second day of March in the year of our Lord One Thousand Eight Hundred and Fifty five Personally Came into open Court Pearl G. Washburn and acknowledged himself to owe and be indebted to the People of the State of Illinois for the use of the inhabitants of Will County in the Sum of Fifty dollars to be levied and made of his goods and Chattles Lands and Tenements if default be made in the following Condition, which is that if the said Pearl G. Washburn Shall personally be and appear before the Will County Circuit Court in the State of Illinois on the first day of the next Term thereof to be holden at the Court House in Joliet in said County and State aforesaid on the first Monday of September next to Testify the Truth in the matter of a Certain Indictment for Committing Adultery &c upon his daughter preferred by the Grand Jury of said Will County at the present March Term A.D. 1855 of said Will County Circuit Court and now pending and undetermined in the said Court against said John Bergen and shall then and there remain in Continual Attendance upon said Court until discharged Thereby And shall not depart from thence without Leave of the said Court. Then and in that Case this Recognizance to be Null and void otherwise to be and remain in full force and Effect

9

And with this the said Pearl H. Freshburn expressed himself to be content. which by order of the Court is entered of Record."

And afterwards to wit, on the Fifth day of September in the year of our Lord one thousand eight Hundred and fifty five it being one of the regular days of said September Term of said Court for the said year A.D. 1855 aforesaid and the said Court being then duly organized and sitting in open Court for the transaction of business the ~~following proceedings were had and entered of Record~~ said defendant by his said Attorneys filed his said motion to quash said Indictment which is words and figures following to wit,

[12297-5]

Will County Circuit Court

John Bergan
ads
The People of the State of Illinois

} Filed upon the 12th day of Dec. Term, 1866.

The defendant above named before pleading moves the Court to quash the indictment in this cause upon the following grounds

1st The indictment is insufficient because it fails to show by allegations of fact the the relation of parent and child subsisted between the Deft and Phebe R Bergen, so as to bring the case precisely within the statute, the word "daughter" used therein or the allegations "the said Phebe then and there being the daughter of him the said John Bergen" does not sufficiently show such relation because the word "daugter" is a broad word and may imply a legal relation merely such as a son's wife, or it may mean and imply a conventional relation by adoption, whereas the statute contemplates the natural relation of parent and child only.

2d The indictment states conclusions of law instead of facts, by alleging that the deft "feloniously did commit adultery and fornication." This allegation necessarily implies various facts and circumstances, It is necessary in ascertaining the truth of that allegation to determine that one of the parties should be married and the other not. This allegation is of the very essence of the crime charged, and to sufficiently apprise the defendant of what he is obliged

[12297-6]

to meet on the trial and acquit himself of the charge it should have been alleged which was married and which not, If the court is to presume any thing on the subject, and is to presume that either was married it will presume as well that both were, so that there could be no fornication which means sexual intercourse between unmarried persons or between a married person with an unmarried one, The indictment should state the facts and circumstances which constitute the crime in such manner that the court could determine from inspection thereof what offense had been committed, and the defendant know what he must be prepared to meet with evidence, such pleading would not be allowable in civil cases,

Anderson & McAllister
of Counsel for Deft,

And afterwards to wit, on the same day last aforesaid it also being one of the regular days of said September Term of said Court for the said year A.D. 1855 aforesaid. And the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following to wit,

"The People of the State of Illinois
ss
vs
John Berger

Indictment for committing Adultery &c
upon his daughter

And now come the said People by S. W. Bowen States Attorney. And the said defendant also comes by Anderson & McAllister his Attorneys

as well as in his own proper person and enters his motion to quash said Indictment. And after hearing Arguement of Counsel thereon and being fully advised in the premises it is ordered by the Court that the said motion be and it is overruled."

12

And afterwards to wit, on the Seventh day of September in the year Eighteen Hundred and Fifty five it also being one of the regular days of said September Term of said Court for the said year A.D. 1855 aforesaid and the said Court being there duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following, to wit,

The People of the State of Illinois

83 vs Indictment for committing Adultery &c
John Bergen upon his daughter

And now came the said People by S. W. Bowen States Attorney. And the said defendant John Bergen also comes in his own proper person as well as by Messrs Anderson and McAllister his Attorneys And on being Arraigned at the Bar of this Court in due form of law. And being furnished with a Copy of said Indictment preferred against him in this Cause. And a list of the Panel of Petit Jurors of this present week of this present Term of this Court. And the said Indictment being read to him the said defendant. And he being forthwith demanded of and concerning the said Crime alledged against him in said Indictment. how he would acquit

[12297-7]

"himself thereof. For Plea in this behalf says he is "not
13 guilty" in manner and form as alledged against him
in said Indictment. And of this he puts himself on the
Country. And the said People by their said Attorney
do the like."

And afterwards to wit, on the fifteenth day
of September in the year Eighteen Hundred and Fifty
five it being one of the regular days of said September
Term of said Court for the said year A.D. 1855 aforesaid
And the said Court being then duly organized and
sitting in open Court for the Transaction of business
the following proceedings were had and entered of Record
by the said Court in words and figures following to wit,
"The People of the State of Illinois
83 vs } Indictment for Committing Adultery &c
John Bergen } upon his daughter
And now came the said People
by S.M. Bowen States Attorney and enters his motion
that the said defendant do enter into a Recognizance herein
to the next Term hereof. Whereupon it is ordered by the
Court that the said defendant do enter into a Recognizance
herein to the next Term hereof in the sum of Twelve Hundred dollars
Be it Remembered that on this fifteenth day of
September in the year of our Lord one thousand eight
hundred and fifty five personally came into open Court
the said John Bergen and acknowledged himself to owe and
be indebted to the People of the State of Illinois for the use
of the inhabitants of the County of Will in the sum of

"Twelve Hundred Dollars Good and lawful money of the United States to be levied and made of his goods and Chattles lands and Tenements if default be made in the Condition under written. which is that if the said John Bergen shall be and appear before our Circuit Court of our said County of Will on the first day of the next Term thereof to answer the People of the State of Illinois on a certain Indictment preferred against him by the Grand Jury of Will County. And shall not depart thence without leave of said Court. then this Recognizance to be null and void. Otherwise to remain in full force and effect. And with this the said John Bergen acknowledged himself to be content. which by order of Court is entered of Record."

And afterwards to wit, on the third day of January in the year of our Lord one thousand eight Hundred and Fifty six it also being one of the regular days of said December Term of said Court for the said year A.D. 1855. aforesaid. And the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following, to wit

"The People of the State of Illinois

83 vs Indictment for Committing Adultery
John Bergen &c upon his daughter

And now come the said People by S.W. Parmen States Attorney and enters his motion that

this cause be now called up for hearing. And the said Defendant also comes in his own proper person as well as by Anderson and McAllister his attorneys and enter his cross motion that this cause be now called up for hearing Whereupon it is ordered by the Court that this cause be now called up for hearing. Thereupon the said States Attorney enters his motion that this cause do now proceed to trial herein. And the said defendant enters his cross motion that this cause do now proceed to trial herein. And the Court being fully advised in the premises it is ordered that this cause do now proceed to trial herein. Thereupon the said States Attorney enters his motion that a Jury do now come herein and the said defendant enters his cross motion that a Jury do now come herein. Whereupon it is ordered by the Court that a Jury do now come herein Thereupon came the Jurors of a Jury of good and lawful men to wit,

Hiram Johnson,	Lyman Meacham	Robert Clark Sr
Samuel Adams	Hiram Edson	N. N. Butler
Levi McClanes	John Rider Sr	Harvey Reed
Stephen Carpenter	John W. Miller 2nd	John R. Jackson

who being duly empannelled and sworn to well and truly try the issues joined between the said Parties herein and a true verdict give according to law and evidence. And after hearing the evidence this day adduced. The said States Attorney enters his motion that said Jury be kept in custody of an officer and meet the Court tomorrow morning. And the said defendant enters

" his cross motion that said Jury be kept in custody of an officer. Whereupon it is ordered by the Court that said Jury be kept in the custody of an officer and meet the Court tomorrow morning at nine o'clock."

And afterwards to wit, on the fourth day of January Eighteen Hundred and fifty six it being one of the regular days of said September Term of said Court for the said year A.D. 1855 aforesaid and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following, to wit,

"The People of the State of Illinois

83 vs

John Bergin

Indictment for committing adultery upon his daughter.

And now again come the said People by their said Attorney. And the said defendant also again comes in his own proper person. And the said Jury heretofore empannelled herein also again come. Thereupon the said S.W. Bowen States Attorney enters his motion that the said defendant do give Bail herein for his appearance from day to day herein. Whereupon it is ordered by the Court that the said defendant do give Bail herein in the sum of Three Thousand Dollars for his appearance from day to day herein. And it is further ordered by the Court that in case default be made in giving such Bail herein by the

said defendant that he the said defendant be committed to the custody of the Sheriff.

Eleven and one half o'clock in the forenoon. And now it is ordered by the Court that the said defendant be and he is committed to the custody of the Sheriff of Hill County in default as aforesaid of him the said defendant's not giving such Bail as aforesaid from day to day. And after hearing the remainder of the evidence adduced. The Court adjourned until tomorrow morning"

And afterwards to wit on the same day last aforesaid the said defendant filed his said Bill of Exceptions herein which said Bill of Exceptions is in words and figures following, to wit;

Circuit Court of Will County

The people of the State of Illinois } ~~December Term A.D. 1855~~

vs

John Keegan

18

Be it remembered that on the trial of this cause on the 4th day of January A.D. 1856 the Rev. L. H. Loss was called as a witness and sworn on the part of the people and the states attorney asked said witness among other things to state what the deft said to him respecting his having a wife and whether the girl Phebe was the daughter of a former wife, To which the counsel for the deft then and there objected that it was incompetent to prove that the deft had a wife at the time of the ~~circumstance~~ commission of the offence charged, by his confessions or that he had had a former wife and that said Phebe R was the daughter of such former wife, The court overruled the objection and defts counsel then and there excepted, And the witness stated that the deft told him that Phebe R was the daughter of a former wife who died while she was a small infant and he was married to his present wife while Phebe was such infant, The defts counsel thereupon moved to strike out what the witness said with reference to what the deft told him about being married when Phebe R was an infant on the ground that such marriage cannot be proved in that way, Which motion the Court denied and defts counsel then and there excepted, Signed and sealed this 4th day of January during said trial as above mentioned.

S W Randall, (Seal)

[12297-10]

And afterwards, to wit, on the Fifth day of January Eighteen Hundred and fifty six it being one of the regular days of said December Term of said Court for the said year A.D. 1855 aforesaid. And the said Court being there duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following to wit,

The People of the State of Illinois

vs

John Bergen

Indictment for committing Adultery

Now upon this day after

And now again come the said Parties to this suit and the said Jury heretofore impannelled herein also again came. And after hearing the arguments of Counsel and receiving the instructions of the Court said Jury retire in charge of a sworn Officer of this Court to consider of their verdict. And said Jury returning into open Court for verdict say We of the Jury find the said defendant John Bergen "Guilty" in manner and form as alledged against him in the said Indictment and that he the said defendant be confined in the Penitentiary of the State of Illinois for the term of four years. Thereupon the said defendant enters his motion for a new trial herein. And the said States Attorney enters his cross motion that the said defendants motion for a new trial herein be overruled

And afterwards to wit, on the Seventh day of January Eighteen Hundred

"and fifty six it also being one of the regular days of said December Term of said Court for the said year A.D. 1855 aforesaid. And the said Court being thus duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following to wit,

20

"The People of the State of Illinois

83 vs

John Bergen

Indictment for committing Adultery upon his daughter

And now comes the said States Attorney S.W. Bowen and enters his motion that this cause be now called up for hearing. And the said defendant also comes in his own proper person as well as by Anderson and McAllister his Attorneys and enter his cross motion that this cause be now called up for hearing. Whereupon it is ordered by the Court that this cause be and it now is called up for hearing. And now comes on for hearing the arguements of Council upon the said defendants motion for a new Trial heretofore entered herein. And the Court being fully advised in the premises it is ordered that said motion for a new Trial heretofore entered herein be and it is overruled Thereupon the said defendant excepts to the opinion of the Court in overruling his said motion for a new Trial herein. And the said States Attorney enters his motion that the said defendant be recommitted

back to the Common Jail from whence he came. Whereupon it is ordered by the Court that the said defendant be and he is recommitted back to the common Jail of said County from whence he came."

And afterwards, to wit, on the Tenth day of January Eighteen Hundred and fifty six it being one of the regular days of said December Term of said Court for the year A.D. 1855 aforesaid and the said Court being then duly organized and sitting in open Court for the transaction of business the following proceedings were had and entered of Record by the said Court in words and figures following, to wit,

The People of the State of Illinois
vs
John Bergen

Indictment for committing Adultery &c upon his daughter

And now comes the said States Attorney and enters his motion that this cause be now called, And the said defendant by his said Attorneys enter his cross motion that this cause be now called up for hearing Whereupon it is ordered by the Court that this cause be and it now is called up for hearing. Thereupon the said States Attorney enters his motion that the Sheriff employ two Physicians to visit and enquire into the sanity of the said defendant. And the said defendant by his Attorneys enter their cross motion that the Sheriff do employ two Physicians to visit and enquire into the sanity of the said defendant And the Court being fully advised in the premises it is ordered that the Sheriff do employ two Physicians to

" visit and enquire into the sanity of the said defendant,
22 And the said defendant enters his motions in arrest
of Judgment herein. And the said States Attorney
enters his cross motion that said motions in arrest of
Judgment be overruled. And after hearing the arg-
uments of Counsel upon said motion it is ordered
by the Court that said motion in arrest of Judgment
be and it is overruled.

And afterwards, to wit, on the
Eighteenth day of January Eighteen Hundred and
Fifty six it also being one of the regular days of
said December Term of said Court for the said
year A.D, 1855 aforesaid. And the said Court being
then duly organized and sitting in open Court for
the transaction of business the following proceedings
were had and entered of Record by the said Court
in words and figures following, To wit,

[12297-12]

"The People of the State of Illinois
vs
John Bergen

Indictment for committing Adultery upon his daughter

23

And now comes S. W. Bonner States Attorney and enters his motion that this cause be now called up for hearing. And that the Sheriff do present the Body of the said defendant. Whereupon it is ordered by the Court that this cause be and it now is called up for hearing And it is further ordered that the said Sheriff do now present to the Court the Body of the said defendant. Thereupon the said Sheriff brings into open Court the body of the said defendant John Bergen who appears in his own proper person as well as by Anderson and McAllister his Attorneys. And the said States Attorney enters his motion that the Court now here pass sentence upon the said defendant John Bergen upon the said Verdict of the said Jury heretofore rendered and entered of Record in this cause. Whereupon it is ordered by the Court that the said defendant John Bergen be and he is hereby sentenced to Confinement in the Penitentiary of this State for the full end and term of Four Years in accordance with the said Verdict of the said Jury rendered in this cause as aforesaid which term to be computed from and after this date. Thereupon the said States Attorney enters his motion that the said defendant pay the costs of this proceeding. And the Court being fully advised in the premises it is ordered that the said defendant do pay the costs herein as aforesaid And the said States Attorney enters his motion that

[12294-13]

"the said defendant do stand committed until sentence is complied with. Whereupon it is ordered by the court that the said defendant do stand committed aforesaid until sentence is fully complied with as aforesaid. And now Bowen the aforesaid States Attorney enters his motion for judgment against the said defendant for the costs herein aforesaid and for execution thereon. And the court being fully advised in the premises it is ordered that judgment be entered against the said defendant for the aforesaid costs of this proceeding

It is therefore considered by the court that the said People of the State of Illinois do recover of the said defendant John Bergen their costs and charges herein by them about their suit in this behalf expended and that they do have execution therefor."

And afterwards to wit on the 15th day of January A.D. 1856 the said defendant by his said attorneys filed his Bill of Exceptions in the said cause as follows, to wit

"Circuit Court Will County

The people of the State of Illinois } December Term A. D. 1855

vs

John Bergen

23-

Be it remembered that on the trial of this cause on the 4th day of January A. D. 1856 the people called A. F. Patrick as a witness who being sworn testified among other things that he was an acting magistrate and that Phebe R Bergen was sworn as a witness on the examination before him, Mr Bergan was present with his counsel, that he recollected the prominent features of her testimony and could state the substance of it, It appearing that the said Phebe R Bergen is now out of the jurisdiction of this court and has been for some months, ~~since the 5th of March 1855 and~~ living at Silver Creek Chatauque Co. N York where the deft has been living since the 5th of March 1855 and was taken there by the deft after said examination and evidence being given tending to show that deft took her to Silver Creek aforesaid to prevent her from being a witness against him she not having been subpaned, the states attorney offered to prove by this witness what the said Phebe testified to on the said examination, to which the defts counsel then & there objected, The court overruled the objection and permitted the witness to testify to which decision of the deft by his counsel then & there excepted witness said he could not state the whole of what she said but could the substance of it, She testified that her father John Bergen

could

[122 pg 7-14]

for several months previous to that time had been in the habit of cohabiting with her. That he had had sexual intercourse five or six times, that it commenced some two months previously, that it occurred the first time in her own room at her fathers house, that he had been in the habit of coming into the room in the morning before she was up and at other times, that he had made use of his authority and influence over her as a father to accomplish that object, that after the first intercourse of the kind it occurred frequently up to the time when the complaint was made that he had for about two years previously made use of improper conduct towards her in feeling of her. There was a great many other matters called out that I have not stated. She stated I am not positive the time but that it was here in this town ~~at here in this town~~ at her fathers. My impression is that she stated the first time was in the afternoon towards evening at her room, that he put her on to the bed or beside the bed. There was something about the rail road accident. I think she said it was about the time the scalding accident on the rail road. She testified that about the time this accident occurred she was assisting to nurse those injured that she became acquainted with Doctor Putnam when she was nursing, and he went with her to her fathers, and that he had made improper proposals to her & used improper conduct towards her, that she had walked with him on other occasions that she had informed her father of it and asked him what she should do and whether

she should go with him, He said it did not do any harm if nobody knew it, She stated that she did not have any connection with Putnam,
Cross Examined by the defts counsel, The said witness testified that the examination was held on the 5th day of March 1855, the complaint upon which the examination was had, was for rudely and licentiously cohabiting with the said Phebe he being her father, Witness further stated that he did not recollect all that Phebe testified to on that occasion, that she was an hour and a half or two hours giving her testimony, that he only recollected the substance of it and did not pretend to be able to give the precise words,
Whereupon the court interrogated the said witness as follows: are you of opinion that you can recollect the substance of what the witness swore to both on her direct and cross examination

To which the witness Patrick replied "I am of opinion I can recollect and have stated the substance", The court then asked, "Are you of opinion you can recollect the language used by the witness both on her direct and cross examination" To which the witness replied, "I think I can in substance" The counsel for the defendant thereupon moved the court to strike out the evidence of the said Patrick; as to what the said Phebe R swore to before him on the said examination, Which said motion the court denied and the defendants counsel then

there excepted,

28 Royal Reed was called and sworn by the said deft as a witness on his behalf for the purpose of showing among other things the condition of the defendant in the summer of 1854 previous to the commission of the alleged offence as to his sanity. The witness said that he had known the deft for seven years that in the spring of 1854 the deft was in the habit of coming to his witnesses house for milk every day, that in the course of that summer the deft had the cholera and his escape was very narrow when he got about I noticed a marked change in him. He was moody would set for some time looking at vacancy and not hear you when you spoke to him looked wild out of his eyes and would frequently complain that he felt a strong disposition to take his own life, Hereupon the court ordered and decided that what the deft ~~stated~~ said as to his disposition to take his own life was incompetent evidence and the jury should disregard the same, to which the deft's counsel then & there excepted,

Aside from the foregoing the only evidence given upon said the said trial was the confessions and letters and the conduct of deft after his arrest of the deft made to individuals out of court and leading to prove him guilty of the offence charged in the indictment, The evidence being concluded the defendants counsel asked the court to instruct the

Jury as follows,

That if the jury believe from the evidence that the examination of the deft before A. F. Patrick Esquire involved ~~than~~ inquiry into a case of a different nature and character from the case charged and contained in the indictment in this case that then they should for that reason alone reject the evidence given by said Patrick relative to the testimony of Phebe R. Bergan given on said examination before said Patrick,

29

Which instruction the said Court then and there gave to said Jury and so marked the same.

The defendants counsel also requested the court to charge the Jury, that the defendant cannot be convicted upon his alleged confessions uncorroborated by facts or circumstances proved from other sources & witnesses that a crime has been committed; and if they shall exclude the evidence of said Patrick as to what Phebe swore to before him they will then consider whether there is any evidence in the case beside the mere uncorroborated confessions of the deft made out of court and if there is none in the case besides such confessions it will be their duty to acquit him, Which instruction the court also refused to give and the defts counsel then and there to such refusal excepted,

The defts counsel requested the court to instruct the Jury

That if the jury have any reasonable or well founded doubts of the guilt of the accused that then they should acquit him, which instruct the said court gave to the Jury as requested,

Deft also requested the court to instruct the jury; that the jury are judges of the law and the evidence, which the court then and there gave as requested,

The States Attorney requested the court on behalf of the people to instruct the Jury as follows; That the confessions of the defendant are competent evidence for the Jury and are to be considered by the Jury with the other evidence in making up their verdict, which instruction the said court then and there gave to the Jury as requested and the defts counsel excepted,

The States Attorney further requested the court to instruct the Jury as follows:
That if the Jury believe from the evidence that Phebe R Bergen is the daughter of the defendant and that he had sexual intercourse with her as charged in the indictment then the law is for the people, which instruction the Court gave to the Jury and the defts counsel then and there excepted, The Jury retired to consider of their verdict, returning into court and gave their verdict and found the deft guilty fixing his punishment, four years imprisonment in the states prison,
The defts counsel thereupon made a motion for a new

trial which was refused by the court and the defts
31 counsel then and there excepted.

The defts counsel then moved the court that the judgment of the court in the premises be arrested which was also refused and the defts counsel then and there excepted,

And because now of said several matters and things appear upon the record and proceedings in this cause the said Court on 15th day of January at said December Term has on the prayer of said defendant signed and sealed this Bill of Exceptions,

S W Randall (Seal)

I have examined the above Bill of Exceptions and am satisfied with the same,

S W Bowen,
State Attorney,

And afterwards Court on the 11th day of April A.D. 1856 a writ of Error from the Sup. Court of said State in the said cause was filed by the said attorney of the said defendant in said cause commanding the foregoing Record & proceedings for inspection which is accordingly certified to the Justices of said Supreme Court at Ottawa

[12297-17]

State of Illinois
Will County } I Royal E Barber Clerk of the Circuit Court of Will County in said State do hereby certify the foregoing to be a true Correct and perfect Copy and Record of the afore=said entitled cause of the Record of the proceedings of said Court therein and of the Bills of Exceptions filed therein

In attestation whereof I have hereunto subscribed my name and affixed the seal of said Court at office in Joliet in said County this 19th day of April A.D. 1856

R. E. Barber Clerk

John Bergen
vs
The People &c.

Filed May 15. 1856
L. Leland Clerk

SUPREME COURT, STATE OF ILLINOIS.

JOHN BERGEN, *Pltff. in Error,* *vs.* THE PEOPLE OF THE STATE OF ILLINOIS, *Defts. in Error.*	*Indictment under* §125 *Crim. Code.—Abstract of Record.*

THE indictment in this case charges that John Bergen on &c., at &c., "unlawfully, knowingly, and feloniously did commit adultery and fornication upon the person of Phebe R. Bergen, the said Phebe R. Bergen then and there being the daughter of him, the said John Bergen, contrary," &c.; and nothing more. ~~Page 5.~~ The defendant, before pleading to said indictment, moved the Court to quash said indictment upon the following grounds:

1*st.* The indictment is insufficient, because it fails to show by allegations of fact that the relation of parent and child subsisted between the accused ~~Deft.~~ and Phebe R. Bergen, so as to bring the case precisely within the Statute: the word "daughter" used therein, or the allegation, "the said Phebe R. then and there being the daughter of him, the said John Bergen," does not sufficiently show such relation; ~~because the word "daughter" is a broad word, and may imply a legal relative merely, such as a son's wife; or it may mean and imply a conventional relation by adoption, whereas the Statute contemplates the natural relation of parent and child only.~~

2*d.* The indictment states conclusions of law instead of facts, by alleging that the accused ~~deft.~~ "feloniously did commit adultery and fornication." ~~This allegation necessarily implies various facts and circumstances. It is~~ necessary in ascertaining the truth of that allegation to determine that one of the parties was married and the other not. This allegation is of the very essence of the crime charged, and to sufficiently apprise the deft. of what he is obliged to meet on the trial and acquit himself of the charge, it should have been alleged which *was* married and which *not*. If the Court is to presume anything on the subject and is to presume that

[12297-19]

either was married, it will presume as well that both were; so that there would be no fornication, which means sexual intercourse between unmarried persons or between a married person with an unmarried one.

The indictment should state the facts and circumstances which constitute the crime, in such manner that the Court could determine from inspection thereof what offense had been committed, and the deft. know what he must be prepared to meet with evidence; such pleading would not be allowable in civil cases." Pages 10, 11.

The Court overruled the motion to quash ~~and the deft. excepted.~~

The first bill of exceptions raises this point, to-wit:

The people called ~~the Rev. L. H.~~ a witness by the name of Loss and among other things offered to show by him that the defendant confessed to him, witness, that he had a wife at the time of the commission of the offense charged, and that the girl Phebe was the daughter of a former wife. To which the counsel for the deft. objected, that it was incompetent to prove by the defendant's confession that he had a wife at the time of the commission of the offense charged, or that he had a former wife and that said Phebe R. was the daughter of such former wife. The Court overruled the objection and the defts. counsel then and there excepted. And the witness stated that the deft. told him that Phebe R. was the daughter of a former wife who died while she was a small infant, and he was married to his present wife while Phebe was such infant. The defts. counsel thereupon move the Court to strike out so much of witnesse's answer as related to deft's. confession of being married to his present wife, on the ground that such marriage cannot be proved in that way. The court overruled the motion and defts. counsel then and there excepted. Page 18.

The second Bill of Exceptions contains and raises the following points, viz:

The people called A. F. Patrick, who testified that he was an acting Magistrate and that Phebe R. Bergen was sworn before him, that the deft. was present with his counsel, that he recollected the prominent features of her testimony and could state the substance of it. It appearing that the said Phebe R. Bergen is now out of the jurisdiction of this court and has been for some months living at Silver Creek, Chatauque Co., New York, where the deft. has been living since the 5th of March, 1855, and was taken there by the deft. after said examination; and evidence being given tending to show that deft. took her to Silver Creek aforesaid to prevent her from being a witness against him, she not

having been subpœnaed, the State's Attorney offered to prove by this witness what the said Phebe R. testified to on the said examination; to which the deft.'s counsel objected. The Court overruled the objection, and permitted the witness to testify. To which decision, the deft., by his counsel, then and there excepted. Witness said he could not state the whole of what she said, but could the substance of it. She stated that her father had for several months previous to that time been in the habit of cohabiting with her, that he had had sexual intercourse five or six times; that he had made use of his authority and influence as a father to accomplish that object, &c. On his cross-examination, this witness said that the examination was held on the 5th day of March, 1855; *the complaint upon which the examination was had, was for rudely and licentiously cohabiting with the said Phebe, he being her father.*

The deft., on this appearing, moved the Court to strike out the evidence of the said Patrick, as to what said Phebe R. swore to before him on the said examination, which said motion the Court denied, and the deft.'s counsel then and there excepted. Pages 25, 26, 27.

The deft.'s counsel called and swore Royal Reed, as a witness on deft.'s behalf, for the purpose of showing, among other things, the condition of the deft. in the summer of 1854, previous to the commission of the alleged offence, as to his sanity. The witness said he had known the deft. seven years; that in the spring of 1854 the deft. was in the habit of coming to witness' house every day; that in the course of that summer the deft. had the cholera, and his escape was very narrow; when he got about, witness noticed a marked change in him. He was moody, would sit for some time looking at vacancy, and not hear you when you spoke to him, looked wild out of his eyes, *and would frequently complain that he felt a strong disposition to take his own life.* Hereupon the Court ordered and decided that what the deft. said as to his disposition to take his own life was incompetent evidence, and the Jury should disregard the same. To which the deft.'s counsel then and there excepted.

Page 28.

The Bill of Exceptions states, that aside from the evidence of said Patrick as to what Phebe R. swore to before him, there was no other evidence given in the cause against deft., except his confessions made to individuals out of Court. Page 28.

The Court, at the request of the deft.'s counsel, instructed the Jury as follows: That if the Jury believe from the evidence, that the examina-

tion of the deft. before A. F. Patrick, esquire, involved an inquiry into a case of a different nature and character from the case charged and contained in the indictment in this case, that then they should, for that reason alone, reject the evidence given by said Patrick, relative to the testimony of Phebe R. Bergen, given on said examination before said Patrick. Page 29.

The deft.'s counsel requested the Court to charge the Jury that the defendant cannot be convicted upon his mere confessions uncorroborated by facts or circumstances, proved from other sources and witnesses that a crime has been committed; and if they shall exclude the evidence of said Patrick as to what Phebe swore to before him, they will then consider whether there is any evidence in the case besides the mere uncorroborated confessions of the deft., made out of Court, and if there is none in the case besides such confessions, it will be their duty to acquit him. Which instruction the Court also refused to give, and the deft.'s counsel then and there to such refusal excepted. Page 29.

The State's Attorney requested the Court, on behalf of the People, to instruct the Jury as follows: "That the confessions of the deft. are competent evidence for the Jury, and are to be considered by the Jury with the other evidence in making up their verdict." Which instruction the said Court then and there gave to said jury, and the defendant's counsel then and there excepted. Page 30.

The State's Attorney further requested the said Court to instruct the jury as follows: "That if the jury believe from the evidence that Phebe R. Bergen is the daughter of the deft. and that he had sexual intercourse with her as charged in the indictment then the law is for the people." Which instruction the said Court then and there gave to said jury, and the defendant's counsel then and there excepted. Page 30.

The jury found a verdict of guilty and fixed the punishment at four years.

The defts. counsel thereupon moved for a new trial which was denied, and defts. counsel then and there excepted. Page 31.

The defts. counsel then moved that the judgment be arrested, which motion was also denied, and deft. excepted. Page 31.

Judgment passed according to the verdict.

ANDERSON & McALLISTER,
Attorneys for Plff. in Error.

Supreme Court
John Bergen
vs
The People
Abstract

W. R. McCullough
for Plaintiff

tion of the deft. before A. F. Patrick, esquire, involved an inquiry into a case of a different nature and character from the case charged and contained in the indictment in this case, that then they should, for that reason alone, reject the evidence given by said Patrick, relative to the testimony of Phebe R. Bergen, given on said examination before said Patrick. Page 29.

The deft.'s counsel requested the Court to charge the Jury that the defendant cannot be convicted upon his mere confessions uncorroborated by facts or circumstances, proved from other sources and witnesses that a crime has been committed; and if they shall exclude the evidence of said Patrick as to what Phebe swore to before him, they will then consider whether there is any evidence in the case besides the mere uncorroborated confessions of the deft., made out of Court, and if there is none in the case besides such confessions, it will be their duty to acquit him. Which instruction the Court also refused to give, and the deft.'s counsel then and there to such refusal excepted. Page 29.

The State's Attorney requested the Court, on behalf of the People, to instruct the Jury as follows: "That the confessions of the deft. are competent evidence for the Jury, and are to be considered by the Jury with the other evidence in making up their verdict." Which instruction the said Court then and there gave to said Jury, and the defendant's counsel then and there excepted. Page 30.

The State's Attorney further requested the said Court to instruct the jury as follows: "That if the jury believe from the evidence that Phebe R. Bergen is the daughter of the deft. and that he had sexual intercourse with her as charged in the indictment then the law is for the people." Which instruction the said Court then and there gave to said jury, and the defendant's counsel then and there excepted. Page 30.

The jury found a verdict of guilty and fixed the punishment at four years.

The defts. counsel thereupon moved for a new trial which was denied, and defts. counsel then and there excepted. Page 31.

The defts. counsel then moved that the judgment be arrested, which motion was also denied, and deft. excepted. Page 31.

Judgment passed according to the verdict.

ANDERSON & McALLISTER,
Attorneys for Plff. in Error.

Supreme court - third Division - June term 1856

John Bergen }
vs } Error to Will
The People &c }

And now comes W H L Wallace States attorney &c who defends for said people in this behalf, and says that there is not any error in the record of the proceedings aforesaid as the said plaintiff in error hath above thereof complained ~~against him~~ and this he is ready to verify, Wherefore he prays judgement that said writ of error be dismissed and the said judgement of the said Will county circuit court be in all things affirmed -

W H L Wallace
for the people -

[12297-24]

John Bergen
vs
The People

Joinder in error

Filed June 12, 1856
L Leland
Clerk

Supreme Court of the
State of Illinois

John Bergen
Pltff in Error
vs
The People of the State of
Illinois Defts in Error

Error to the Circuit
Court of Will County.

The Clerk of said Court will please issue
a writ of Error to the Clerk of the Circuit
Court of Will County to bring up the Record
&c in certain prosecution on behalf of said
Defts in Error against the said John Bergen
for committing as it was alleged adultery
& fornication with his own daughter, tried
at the December Term 1855 of said Court
and the Pltff in Error convicted & sentenced
to Alton States Prison for the Term of four
years and make said writ returnable
the Second Monday of June Next

Chicago April 7th 1856

Anderson & McAllister
Attys for Pltff in Error

[12297-23]

John Bergen
vs
The People &c

Precipe

Filed April 9, 1856
L Leland Clerk
By J. B. Rice Deputy

Paid

John Bergen
vs
The People
1856
4 P. D

1856