

14275

No. _____

Supreme Court of Illinois

^C
~~S~~ehran et al

vs.

People

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

14275

No. 7-123

PEOPLE'S CAUSES.

1862

Schran

vs

People

of the State

State of Illinois
County of Cook
City of Chicago

83.

1
Was before the
Honorable Robert S. Wilson, Recorder of the
City of Chicago, and Presiding Judge of the Rec-
orders Court of the City of Chicago, at a term there-
of, began and held at the Court House in the
City of Chicago, in the County and State aforesaid
on the first Monday of, it being the Third day of
June in the year of our Lord One Thousand Eight
Hundred and Sixty One and of the Independence of
the United States the Eighty Fifth

Present: Hon. Robert S. Wilson, Recorder of the City of Chicago
Carlos Haven, State attorney.
A. C. Hering, Sheriff of Cook County.

Attest: Joseph R. C. Forrest, Clerk of said Court.

It is remembered that heretofore to
wit at the June Term of said Court, to wit on the
Third day of June A. D. 1861, the following, among
other proceedings in said Court were had and enter-
ed of Record to wit:

The Sheriff returned into Court the
 Tenire facias formerly issued, by which it appears to
 the Court, that the following named persons have
 been duly summoned to appear to day to serve as
 Grand Jurors at this Term of Court, to wit;

A. J. Wright.	James Duffy.	Leop. Mayer.
J. D. Childs.	C. Wahl.	E. Frankenthal
Ab. H. Norton.	Henry Wimming.	John B. Bush.
O. Morrison.	J. S. Newhouse.	Wm. A. Green.
J. F. Allendrew.	A. Gorman.	Wm. Morse.
W. G. Colson.	St. C. Van Bunt.	A. Hitchcock
George Lawson.	R. R. Ball.	also Gaines.
H. Fuller.	H. B. Pike.	

who upon being called answered to their names, and
 gave their attendance at this Term of Court.

Thereupon A. J. Wright, one of
 the said Grand Jurors having been appointed,
 by the Court, Foreman of said Grand Jury, they
 were duly sworn in and charged by the Court, and
 thereupon retire to consider of their presentments.

And afterwards to wit at the Term
 last aforesaid, to wit; on the Eleventh day of

June in the year last aforesaid, the following
among other proceedings in said Court were had
and entered of Record to wit:

3 The Grand Jury came into open
Court and made, amongst others, the following
presentment, endorsed True Bill, which said
True Bill is in the words and figures following
to wit;

" State of Illinois }
City of Chicago } ss.
Cook County }

Of the June Term of the
Recorders Court of the City of Chicago, in said
State and County in the year of our Lord one
thousand eight hundred and sixty one.

The Grand Jurors, chosen,
selected and sworn in and for the City of Chic-
ago in the County of Cook and State of Illinois,
in the name and by the authority of the People of
the State of Illinois, upon their oaths present, that
Barbey Schram, Benedict Schram and Lewis
Schramm late of said City, on the tenth day
of May in the year of our Lord one thousand
eight hundred and sixty one, in said City of

4
Chicago, in the County and State aforesaid, in
and upon one Wolf Schaffer in the peace of the
said People then and there being unlawfully and
riotously did make an assault with force and
violence and him the said Wolf Schaffer then
and there unlawfully riotously with force and
violence did beat, bruise, strike and pound and
other wrongs and injuries to the Wolf Schaffer then
and there unlawfully, riotously, forcibly and vil-
ently did, contrary to the Statute, and against
the peace and dignity of the same People of the
State of Illinois.

Charles Haven,
State Attorney.

and which said True Bill has the following
endorsements;

P. C. No. 3081.

Recorders Court of the City of Chicago, Term Term
1861.

The People of the State of Illinois

vs.
Barney Schramm, Benedict Schramm and
Lewis Schramm

Indictment for Riot.

A. True Bill.

A. J. Wright, Foreman of the Grand Jury.

Witnesses: Wolf Schaffer, Geo. Krockenmuss,
Rosa Schaffer, Leo Schwartz.

Filed June 11th ct. D. 1861.

J. H. C. Fornest, Clerk.

And afterwards to wit: at the October Term of said Court to wit on the ^{4th} Twenty Second day of October ct. D. 1861, the following among other proceedings in said Court were had and entered of Record to wit:

People vs.

3081.

Barbey Schramm,
Benedict Schramm
Lewis Schramm

Indictment for
Riot.

This day come the said Defendants Benedict Schramm and Lewis Schramm with their Counsel, and the said Defendants having been furnished with a Copy of their Indictment and a list of the Jurors and Witnesses and they being now here duly arraigned for their new say, that they are

Q not guilty in manner and form as charged in the Indictment and of this they put themselves upon the Country, - and now also comes the said Defendant Barbay Schramm by her Counsel and he enters and files a Plea of abatement for misnomer, which said Plea is in the words and figures following to wit;

In the Recorders Court
Oct. Term A. D. 1861.

State of Illinois
Cook County
City of Chicago

35.

Barbara Schramm
who is impleaded under the name and style of Barbay Schramm together with Lewis Schramm and Benedict Schramm, comes and says, that she is not now, nor at the time of finding said Indictment nor at any time before that time, nor since then known by or under the name or appellation of Barbay Schramm, or by any other name or designation than that of Barbara Schramm which is her sole true name and designation: and that Barbay Schramm as set forth in said Indictment is not her true name and never was, nor was she ever known thereby.

Wherefore she prays judgment of said Indictment and that she may be

discharged therefrom.

Barbara Schram.

Subscribed and sworn to before me
this 22^d day of October A. D. 1861.

J. H. C. Forrest
Clerk.

7 and thereupon comes the said People by Carlos
Haven, State attorney and file their replication to
said Plea which said Replication is in the words
and figures following to wit;

Recorders Court of City of Chicago
Oct. 5. 1861.

People vs.

Barbary Schram, impleaded
with Lewis Schram and
Benedict Schram

Indictment for
Riot.

And now come the
said People by Carlos Haven, State attorney and
say that the said Barbara Schram is known
as well by the name of Barbary Schram as
Barbara Schram of this they put themselves on
the Country.

Carlos Haven,
State Atty.

And now issue being joined
it is ordered by the Court that a jury come, there-
upon comes a jury of good and lawful men, to
wit;

8

John Tyler,
J. R. Armstrong,
John Dwyer,
A. C. Cutter,
E. Howland,
W. H. Williams,

Thomas Hattie,
Levi Gullickson,
D. H. Howard,
Michael Grant,
Jas. H. Pearson,
John Goodsell.

who being duly impanelled and sworn and they
hearing the testimony of witnesses, arguments of
Counsel and instructions of the Court, retire in
charge of a sworn officer, to consider of their Verdict;
and afterwards return into Court and for Verdict
say;

We of the Jury find the Defendants
Barbey Schram and Benedict Schram - Guilty -
and recommend them to the mercy of the Court -
and Lewis Schram, Not guilty. -

whereupon Lewis Schram was dis-
charged by this Court.

And now neither the
said Defendants, nor their Counsel for them saying
anything further, why the judgment of the
Court should not now be pronounced against

them on the Verdict of Guilty heretofore rendered
in this cause;

Therefore, it is ordered and ad-
judged by the Court that the said Defendants
Barbaj Schram and Benedict Schram pay all
the costs of these proceedings and that Execution
issue therefor.

State of Illinois
County of Cook
City of Chicago } 83.

11 J. J. K. C. Forrest
Clerk of the Recorders Court of the City of
Chicago, County and State aforesaid, do here-
by certify the above and foregoing to be a true
and complete copy of all the proceedings entered
of Record and of all the papers on file, in a
certain cause heretofore pending in said Court
wherein the People of the State of Illinois was
Plaintiff and Barlow Schramm and Benedict
Schramm impleaded with Lewis Schramm were
Defendants.



In Witness Whereof, I have
hereunto set my hand, and af-
fixed the seal of said Court,
at Chicago, this Third day
of March A. D. 1862.

J. J. K. C. Forrest
Clerk

In the Supreme Court of the State of Illinois,
 April Term A.D. 1862,
 Third Grand Division,

Barbory Schumann	}	Error to the Recorder's Court of Appeals, Indictment for Riot.
Abner Schumann		
of P.P. in Error		
The People of the State of Illinois		

Expts in Error

And now come the said
 Plaintiffs in Error & their Attorney
 Arthur W. Windell move
 by the Court below Error in the
 following particulars - viz:

1. Trying all the defendants together upon the Indict-
 ment: instead of Barbara alone in her plea in
 abatement.
2. The verdict of the Jury was illegal, because it should
 have passed on the plea in abatement: and not upon the
 question of guilt or innocence under the Indictment.
3. The Court erred in rendering judgment against
 the Plaintiffs in Error.

And for other Manifest Errors contained in
 said Record: Wherefore they pray that said
 judgment may be reversed:

Arthur W. Windell
 Plaintiffs' Attorney.
 Error in the foregoing.
 Carlos Harris
 Statist

Arthur W. Windell
 for P.P. in Error

There is no
 Record
 Filed April 24, 1862
 at St. Louis
 Mo.

Sub. Entered 7-9-62
 Schumann
 9-23-62
 The People
 Windell

In the Supreme Court of the State of Illinois
April Term A.D., 186

Barbey Schram et al
vs
The People ex } Error to Records
 } Court of Chicago

Points made by Defts in Error

Benedict Schram was properly convicted. The plea in abatement did not effect him - it only raised an issue as to Barbey. The indictment charged and the jury found from the evidence that Benedict & Barbey were guilty of a riot.

The plea might even have been confessed by Barbey, & yet, if the jury had found Benedict guilty of a riot with her it would not have been error as to him.

The verdict was informal but was constant that the

jury failed to pass upon the plea
in abatement. On the contrary
they found Barbary guilty.
An issue was made and a
jury called & sworn to try it -
there was no other for them
to try.

If the issue having been
found against the defendant
the judgment to be rendered
was not responsible on us
& therefore the court properly
rendered a judgment for
costs

Barb. Crim L. 343

D. P. Jones
States Atty.

7. P.D.
Barbey Schram
et al
vs
The People &c

Depts in Error
points

Filed May 5th 1862
L. Ireland
Clerk.

In the Supreme Court of the State of Illinois
April Term A.D. 1862

Barbey Schram et al. }
vs } Error to Recorders
The People ex o } Court of Chicago

Points made by Defts in Error

Benedict Schram was properly convicted. The plea in abatement did not affect him. It only raised an issue as to Barbey. The indictment charged and the jury found from the evidence that Benedict & Barbey were guilty of a riot.

The plea might even have been confessed by Barbey & yet if the jury had found Benedict guilty of a riot with her it would not have been error as to him.

The verdict was informal but non constat that the

jury failed to pass upon the
plea in abatement. On the
contrary they found Barbey
guilty. An issue was made
and a jury called and sworn
to try it. There was no other
for them to try

The issue having been found
against the defendant the
judgement to be rendered
was not respondent onster
therefore the court properly
rendered a judgement
for costs

Barb. Crim L. 343

D. S. Jones

State Attorney

Barbary Schoam
et al.

us
The People &c

Prints for Dept
in Error

Filed May 5th 1862
L. Leland
Clerk.

In the Supreme Court of the State of Illinois
April Term A.D. 1862

Barbey Schram }
et al vs. } Error to Records
The People &c } Court of Chicago

Points made by Defts. in Error

Benedict Schram was properly
arrested - The plea in abatement
did not affect him - It only
raised an issue as to Barbey.
The indictment charged with
the jury found from the evidence
that Benedict & Barbey were
guilty of a riot.

The plea the plea might even
have been confessed by Barbey
& yet, if the jury had found
Benedict guilty of a riot with
her, it would not have been
error as to him

The verdict was informal, but

now constat that the jury failed
to pass upon the plea in abatement.
On the contrary they found
Barbey guilty

An issue was made & a
jury called and sworn to try
it. There was no other for
them to try - the issue having
been found against the defendant
the judgement to be rendered
was not responded upon
& therefore the court properly
rendered a judgement for
costs

Barb. Conin, L 343

D. V. Jones
States Attorney

^{7 P. 2}
Barbary Schram
Hals Jor

The People &c.

Prints for Drift
in Enro

Filed May 5th 1862
S. Leland
clerk.

In the Supreme Court of the State
of Illinois

April Term A.D. 1862

Barbey Schram }
et al vs } Error to Recorder
The People ex } Court of Chicago

Points made by Defts. in Error

Benedict Schram was properly
convicted. The plea in abatement
did not effect him. It only
raised an issue as to Barbey.

The indictment charged and
the jury found from the
evidence that Benedict &
Barbey were guilty of a riot.

The plea might even have
been confessed by Barbey
and yet, if the jury had
found Benedict guilty of a
riot with her, it would
not have been error as to
him

The verdict was informal,

but now constat that the jury
failed to pass upon the plea
in abatement. On the contrary
they found Barbey guilty.

An issue was made
and a jury called and sworn
to try it. There was no other
for them to try. The issue
having been found against
the defendant the judgement
to be rendered was not respondeat
quæstion & therefore the court
properly rendered a judgement
for costs.

Barb. Crim L 343

D. J. Jones
States Atty

Barbey P. P.
State us -

The People &c

Prints for Drafts
in Error

Filed May 5th 1852
L. Leland
Clerk

In the Supreme Court of the State of Illinois
April Term A.D. 1862

Barbey Schram }
et al. vs. } Error to Recorders Court
The People &c } of Chicago

Points made by Defts. in Error

Benedict Schram was properly convicted. The plea in abatement did not affect him. It only raised an issue as to Barbey. The indictment charged and the jury found from the evidence that Benedict & Barbey were guilty of a riot.

The plea might even have been confessed by her, and yet, if the jury had found Benedict guilty of a riot with her it would not have been error.

The verdict was informal, but more consistent than the jury

failed to pass upon the plea in
abatement. - On the contrary
they found Barbary guilty

An issue was made & a jury
called and sworn to try it. There
was no other for them to try

The issue having been
found against the defendant and
the judgment to be rendered
was not respondent's master
& therefore the court properly
rendered judgment for costs

Barb. from L 343.

D. D. Jones

States Attorney

Barbas Schram
et al ^{vs}
The People &c

Defts Points

In the Supreme Court of the State of Illinois
April Term A.D. 1862

Barbey Schram }
et al. vs. } Error to Records
The People &c } Court of Chicago

Points made by Defts in Error

Benedict Schram was properly convicted - The plea in abatement did not affect him - It only raised an issue as to Barbey - The indictment charged and the jury found from the evidence that Benedict & Barbey were guilty of a riot.

The plea might even have been confessed ~~as to~~ ^{by} her & yet if the jury had found Benedict guilty of a riot with her it would not have been error as to him.

The verdict was infirm

but it does not appear that
the jury failed to pass upon the
plea in abatement - on the contrary
they found Barbay guilty
An issue was made & a jury
called and sworn to try it.
There was no other for them
to try. The issue having been
found against the defendant
the judgement to be rendered
was not respondent onster
therefore the court properly
rendered a judgt for costs
Barb, Comin L 343

D. O. Jones
States Atty

^{7 P.D.}
Barbey Schramm
et al
vs
The People &c

Points for Drifts
in Essex

Filed May 5th 1862
L. Deland
clerk.

In the Supreme Court of the State of Illinois
April Term A.D. 1868

Barbey Schram et al
vs.
The People &c } Error to Reversing
Court of Chicago

Points made by Defts. in Error

Benedict Schram was properly convicted. The Plea in abatement did not affect him - it only raised an issue as to Barbey.

The indictment charged and the jury found from the evidence that Benedict & Barbey were guilty of a riot.

The plea might even have been confessed by Barbey & yet if the jury had found Benedict guilty of riot with her it would not have been error as to him.

The verdict was informal but now constant that the

jury failed to pass upon the
plea in abatement. On the
contrary they found Barbey
guilty. An issue was made
and a jury called and sworn
to try it - there was no other for
them to try

The issue having been found
against the defendant the
judgement to be rendered was
not respondent onoter &
therefore the court properly
rendered a judgement
for costs Barb. Crim L 343

W. S. Jones
States Attorney

^{T. P. D.}
Barbey Schram
Hall
vs.
The People &c

Depts Points

Filed May 3rd 1862
D. Ireland
Clerk

Ch. 7 - P. J.

Abbot. & Faint

File M. 29. 1862
L. H. M.
Ch.

IN THE
SUPREME COURT, STATE OF ILLINOIS,
THIRD GRAND DIVISION,
APRIL TERM, A. D. 1862.

BARBARA SCHRAM, }
IMPLEADED UNDER THE NAME OF }
BARBAY SCHRAMM, } *Indicted for Riot.*
vs. }
THE PEOPLE OF THE STATE }
OF ILLINOIS. }

ABSTRACT OF RECORD.

- 1 *Placita.*
- 2 Swearing of Grand Jury, June Term, 1861.
- 3 Indictment charges the commission of a riot, by Barbay Schramm, Louis Schramm and Benedict Schramm, May 10,
- 4 1861, in the city of Chicago, by beating and making assault upon one Wolf Schaffer, etc.
- 5 Plea of not guilty, by Louis Schramm and Benedict Schramm.
- 6 Barbara Schramm filed plea in abatement, stating that her sole true and proper name is and ever was Barbara Schramm,

and not Barbay; that she is and was always solely known by and under the name of Barbara, and never by or under that of Barbay; concluding with a prayer of judgment of the indictment, etc.

7 Replication: That she, the said Barbara Schramm, is known as well by the name of Barbay as by that of Barbara; concluding to the country, etc.

8 Issue joined.

Jury called, sworn and impaneled, and evidence being heard, they return their verdict:

"We of the jury find the defendants, Barbay Schramm and Benedict Schramm, guilty; recommend them to the mercy of the Court; and Louis Schramm not guilty."

9 Judgment: That said defendants, Barbay Schramm and Benedict Schramm, pay all the costs of these proceedings, and that execution issue therefor.

11 Clerk's certificate.

ERRORS ASSIGNED:

1. In trying the issues upon the plea in abatement and not guilty, together, by the same jury.

2. The verdict of the jury was erroneous, and contrary to law, in not passing upon the plea in abatement, and finding Barbara Schramm guilty, when the question of her guilt was not in issue before them.

3. The judgment of the Court was erroneous, in that the Court sentenced plaintiff in error while the plea in abatement remained undisposed of.

ARTHUR W. WINDETT,
Attorney for Plaintiff in Error.

POINTS AND AUTHORITIES MADE AND CITED FOR PLAINTIFF
IN ERROR:

I. The Court erred in trying the persons accused all together upon the indictment, instead of empanneling a jury to try the truth of the plea in abatement; which, if true, must have caused the acquittal of plaintiffs in error: Barbara, upon her plea in abatement, and of Benedict Schramm, because Louis being innocent, as is proved by the verdict, Benedict could not have alone been guilty of *riot*, and could not have been convicted of it.

II. The verdict was wrong. It should have found the truth or falsehood of the plea in abatement, upon which issue was joined, and not the guilt of Barbara Schramm, when that issue was not before them.

III. The judgment of the Court was wrong in passing sentence upon Barbara Schramm, when her plea in abatement was undisposed of.

IV. By the verdict of the jury, Louis Schramm was not guilty of the alleged riot. In legal presumption, Barbara Schramm, while her plea in abatement was undisposed of, could not be held guilty of it; consequently Benedict Schramm alone and by himself could not have been guilty of the riot, as charged, and should have been acquitted, and discharged from the indictment.

ARTHUR W. WINDETT,
Of Counsel with the Plaintiff in Error.