

No. 14777

Supreme Court of Illinois

Armstrong

vs.

People

187 1865

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.
People's Causes.

No. 10

J. W. Middleton & Co., Stationers, 196 Lake St.

Armstrong
vs
People

1865

Supreme Court of the State of Illinois:

Third Grand Division.

Of April Term A.D. 1865

William W. Armstrong

vs.

The People, vs.

Error to Rock Island.

Argument for Plaintiff in Error.

The Abstract is so brief, and yet so full and clear that no statement of the case here is required.

The only question presented by the record is the sufficiency of the verdict to warrant the entry of any judgment upon it.

- We respectfully submit that it is insufficient,
1. Because a material part of it, to-wit, the part which imposes a fine, was beyond the competency of the jury to find.

If there be any doubt as to the want of authority in the jury to impose a fine, we urge

1. That at Common Law they fixed no part of the penalty.
2. That our statute has not changed the Common Law, except as to the term of imprisonment in some cases. as to the fine, in none.
3. This Court has said, in a case under a statute analogous to this as respects the penalty,

"the imposition of the fine was a duty the law has devolved on the Court and not on the jury"

Gerard vs. The People 3 Scam. 364.

See Laws of 1833 p 175 § 29 - cited on brief 4. And such seems to have been the practice, in the only reported Case in this State, under a Statute identical in all respects with this.

Holliday vs. The People 4 Gilm. 111.

Laws of 1833 p. 179 § 46 - also on brief.

If there be any Statute or decision to the contrary this Court will be aware of it or the learned State's Atty will produce it. We know of none.

That it was a part of the verdict - so understood and intended by the jury - and not a suggestion or recommendation, seems entirely clear, from the language and from the circumstances. Suggestions and recommendations always set forth facts in or connected with the Case or with the Party, but never intimate the specific kind or amount of punishment without any reference to facts. Here they suggest nothing, recommend nothing, ask nothing - they "find" and they "fix" - by authority or supposed authority as jurors upon their oaths and under their responsibilities as such - they "find" the deft "guilty" and "fix" the term of his imprisonment, "together with" a fine of one hundred dollars. and it would be doing no greater violence to language to regard their finding

of guilty or their fixing of the term or both as mere suggestion or recommendation or request, than so to regard the fixing of the fine. We can discover no principle of construction or interpretation that will put these several doings upon different footings.

Nor is there any intimation of a different understanding on the part of the Circuit Court. No suggestion of informality or that the jury had exceeded their power, no instruction that they had erred & how they might remedy the error, no amendment proposed & no necessity for amendment hinted. It was accepted just as it is, fine and all, so entered, so remained when the jury was discharged and still so stands of record.

Furthermore, we insist it is a material part, that is to say, a part upon which as it stands another and clearly material part, to wit, the term of imprisonment as fixed, depends, and which other part would have been different from what it now is if this had been either different from what it is or altogether omitted.

The punishment prescribed for the offence here charged is compounded of fine and imprisonment. Both kinds must be inflicted. Except in extreme cases, where the extreme of each is inflicted (of which this is not one) these two kinds, if deter-

mined by the same organ and that organ actuated by intelligence and a sense of justice, must necessarily be adjusted with reference to each other. That is to say, if either kind were greater or less in any given case the other would certainly be less or greater. A certain total or aggregate amount of punishment must be presumed to be intended, which would necessarily be changed by a change in the amount of either of the components. The proportions of these different kinds of punishment are determined, not arbitrarily but by circumstances which affect different minds differently. To one the fine of One hundred dollars is more than that of a thousand to another and less than that of ten to a third. So of the imprisonment. There is nothing in the record to show the comparative ability of this plaintiff in error to pay a fine or endure imprisonment, & the circumstances which may have influenced the jury to apportion the two kinds of punishment as they did do not appear, but for some reason or reasons satisfactory to themselves they fixed upon two thirds of the extreme amount of imprisonment and one tenth of the extreme amount of fine, as what he ought to suffer. The term of two years is their verdict upon the basis of a fine of one hundred dollars - upon the basis of a fine of any other sum it is not, that is, it could not, intelligently, and justly, be.

And so it cannot be said with any degree of certainty that this term of two years is their verdict upon the understanding that the Court or any other than themselves was to determine the fine, unless it can be said that they understood that the Court would fix the fine at this precise sum - and surely that cannot be said. Presumption, in reference to such a matter, are not admissible in a criminal case.

If the jury had lacked authority to fix any portion of the punishment and yet had assumed to fix any, it would present a very different question. So much as related to the punishment might in that case, perhaps, be rejected as surplusage, because such rejection could not change the judgment from what it would have been if the jury had not fixed any. Their verdict of guilty would be absolute - not at all affected by the question of the amount of punishment, and the latter would be the untrammelled and unaided work of the Court. But here it is by no means certain that the rejection, as surplusage, of so much only of the verdict as relates to the fine would not make a different judgment from that which would have been if they had not assumed to determine the amount of fine, for the reason before stated that the amount of the fine necessarily influences the determination of the period of imprisonment which they had authority to determine. In short the part which fixes the fine is material,

of Substance, and therefore cannot be treated as Surplusage.

Is this difficulty fairly met & overcome by regarding the judgment as an adoption of or concurrence in the opinion of the jury, by the Court, as to the fine? Can the Court, by adopting or concurring in the action of the jury in this respect, cure the defect, or make it the same as if the jury had left it entirely to the Court ~~said~~^{to} whom alone it lawfully belongs?

We respectfully submit that this suggestion is novel and dangerous, in criminal jurisprudence.

The law devolves this duty upon the Court alone - just as it devolves the duty of fixing the term of imprisonment upon the jury alone - and if it is to be discharged with as much independence, as much freedom from interference, as is that of the jury by them (with the limitation, only, hereafter noticed). What if the Court expressed its opinion to the jury as to the term, would their adoption of it or concurrence in it, make a verdict fit to be received and entered for judgment accordingly? Can the Court delegate the power or duty to any other, or lawfully listen to the suggestion of any other, as to the specific amount of fine? Would not any Court sternly rebuke such interference knowingly attempted by the clerk, sheriff, jury or any other, without regard either to the intelligence or sincerity of the party? And yet why, except that to tolerate

it would taint not only the particular judgment
(& none the less in case the impertinent suggestions
were adopted or concurred in) but the entire adminis-
tration of justice by such a Court. (This view
strengthens the position above taken that in this
case the determination was received and understood
by the Court not as a suggestion, recommendation or
petition, but as a part of the verdict - otherwise
the jury would have been either rebuked sternly, or
kindly instructed & cautioned). So far as confidence
in the administration of justice is affected, how
much better is it for the Court to listen to such a
suggestion than to determine the amount as between
different sums by lot or chance? In either case the
question will arise, is this the judgment of the Court,
or is it the judgment of some other or a judgment
by lot, & adopted or concurred in ^{by the Court} to avoid responsibility,
or to cure a defect or to avoid the expense and trouble
of a new trial? We insist that the Court alone,
upon its own sole responsibility, and as of his own
unaided judgment upon the facts in the case should
determine this matter. It should admit none into
its counsel, & listen to no voices but those that are
addressed to the jury upon the other kinds of
punishment, without the consent of the prisoner
& for his benefit.

The humane spirit and administration of
the criminal law has afforded the prisoner

the privilege, after verdict against him, of saying whatever he properly may why judgment should not be pronounced upon it. If he avails himself of it, or even if he does not, the Court may, for his advantage enquire of others for any facts which tho' not strictly admissible as evidence upon the trial may sought to mitigate punishment. as, of the strength of the temptation, the intelligence & moral training, the relations sustained to others dependent upon him, his circumstances generally, his conduct subsequent to his arrest, and the like, all facts proper to be considered with reference to the punishment, which however, upon those facts, is to be determined solely by the Court. It would be simply monstrous for the Court to enquire of any, directly as to the amount of fine or other punishment, especially if such enquiry were made without the knowledge and consent and against the interest of the prisoner. This practice is founded and exercised in favor of the prisoner, and like the recommendations of jury or others deals with facts alone, leaving exclusively to the Court the determination of amount & terms of fine & imprisonment upon those facts, and furnishes no precedent for the suggestion to the Court by jury or others of the amount of punishment alone & directly, without any facts upon which to base it, as in this case.

This is the limitation of the rightful power of Courts to receive suggestions, beyond that of juries, above referred to, as we understand it.

Again, unless this part of the verdict can be regarded as immaterial and so rejected as surplusage, could the adoption of it or concurrence in it by the Court operate to amend the verdict? Would not the verdict still remain as it was received & entered, - void & utterly insufficient to warrant any judgment. Is there any power save that of the jury to amend its verdict? If defective in matter of substance the Court could do no more than to instruct them as to the extent of their power & duty, & punish them for contemptuously disregarding such instruction & their duty, but could not make or mend a verdict for them. They alone could change or amend it. In this case it was not so amended.

We believe this Court has ever been as strict & jealous to guard the rights of persons accused of crime as any other, and are therefore encouraged to present a further point - one which has been made before, but not directly determined so far as we know, - which is,

II. That this verdict is insufficient because it

does not find the accused guilty of any specific offence, either by description, by reference to the indictment or otherwise.

We do not argue against the sufficiency of a general verdict but raise the question whether this is a general verdict? A Special verdict finds the facts - a general verdict finds the conclusion of law upon the facts proved under the issue made - if guilty, upon a plea of not guilty, then guilty as charged, guilty in manner & form, &c. guilty of the felony or misdemeanor whereof he stands indicted, or some other but equivalent form leaving nothing for inference
1 Chittys Crim. Law, 635, and the cases
in the State Trials cited on our brief.

In the case at bar it is simply "guilty". But guilty of what? The indictment contains three counts, two of which respectively specify the poisonous liquid or substance with which the crime charged is alleged to have been committed, & the last states that the substance used was unknown to the Grand jury. But the crime, especially in popular apprehension, is the attempt to procure the miscarriage of a woman, being with child, & the means used are but incidents. Did the jury here find the accused guilty of attempting this by means of instruments, by hand alone, or by drugs or poisonous substances, and if the latter, of what kind? If guilty by means of instruments, or by hand

alone, or by means unknown or uncertain (as between instrument, hands, or poisonous substances) then he is legally not guilty under this indictment. The books show instances in which juries supposed & intended their verdict to be guilty, where from further expressions it was clearly not guilty, and so held by the Court.

What did this jury mean? They do not say, and we cannot say except by inference. We may naturally infer, perhaps, that they meant guilty as charged, because he was charged & tried upon that charge. But after all, it may not be so; certainly the verdict does not say so. Highland was charged with larceny of goods of value exceeding five dollars, and the jury not only found him guilty but fixed his term of imprisonment in the Penitentiary which they could not lawfully do unless the goods were satisfactorily proven not only to have been stolen by him but to have of value of five dollars or upwards. A strong case for inference, fully as strong as this, but this Court say the verdict is uncertain & bad. "Nothing can be taken by implication in a criminal case" The verdict on its face must show that the jury in finding it acted ~~upon~~ under the statute on which the indictment was framed. The statute did not expressly

require them to find & express in their verdict the value of the property stolen, but the rule of certainly in Criminal proceedings ded.

Here the presumption from the verdict rather is that they were not acting under the Statute upon which the indictment was framed, because by it they undertook to fix the amount of the fine, which the Statute gave them no authority to do. The principle of that decision and the general views of the Court as there expressed seem to us to sustain this point.

Highland or, The People 1 Scam. 394

We beg leave only further to remind the Court that the Statute of Peofails, by its own terms, has no application to Criminal Cases.

J. B. Hawley &

Geo. W. Pleasants

Attys for Plff in Error

10 22. 187
Supreme Court

William W. Armstrong

vs.
The People &c.

Argument for the
Def in Error.

Filed May 10. 1875—
J. Leland McK

Supreme Court
3rd Grand Division,
April Term, 1865.

William W. Armstrong

vs

The People.

Points for the People.

The sole error assigned upon this record is the insufficiency of the verdict. We think the verdict amply sufficient to take the plaintiff in Error to the Penitentiary, and that is all that is required.

The indictment was framed under the 46 section of the criminal code (R.S. 1845, p. 158) The jury by their verdict say that the defendant is guilty of the offense charged, and fix the term of his imprisonment in the penitentiary at two years. That portion of the verdict which assesses a fine of one hundred dollars may be treated as nugatory - the Court so treated it. The Record recites that the Court adopted the finding of the jury

as its own and assessed a fine of
\$100,00. If the verdict is informal,
it is cured by our Statute of Jeofails
and amendments.

Matson vs Connolly 24 Ill. 142

So much of the verdict as is without
authority may be stricken out as sur-
plusage

Coit vs Wofter, 1 Min. 134.

Charles Blanchard
States atty

10 P.D. 187

Wm W Armstrong

The People

Points for People

Filed Apr. 25. 1861
L. Hill and
Ch.

Supreme Court
3rd Grand Division,
April Term, 1865.

William W. Armstrong -

vs

The People.

Points for the People.

The sole issue assigned upon this record is the insufficiency of the verdict. We think the verdict amply sufficient to take the Plaintiff in Error to the Penitentiary, and that is all that is required.

The indictment was framed under the 46th section of the Criminal Code, (R.S. 1845, P. 158) The jury by their verdict say that the defendant is guilty of the offense charged, and fix the term of his imprisonment in the Penitentiary at two years. That portion of the verdict which assesses a fine of one hundred dollars may be treated as nugatory - The Court so treated it. The record recites that the Court adopted

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and assessed a fine of \$100.00. If the
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our Statute of Jeofails, and amend-
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Matson vs Connolly, 24 Ill. 142

So much of the verdict as is without
authority may be stricken out as
surplusage.

Goit vs Wofus, 1 Minn. 134.

Charles Hauchard
States atty

10 P.D. 187

Wm W Armstrong

23

The People

Points for People

Filed Apr. 25, 1865
L. S. Land
Ck.

Supreme Court of Illinois,

APRIL TERM, A. D., 1865.

WILLIAM W. ARMSTRONG,

vs

THE PEOPLE OF THE STATE OF ILLINOIS.

} *Plaintiff in Error.*

} *Defendants in Error.*

Error from Rock Island.

Abstract of Record.

- 1 PLEAS, &c.
- Empanneling of Grand Jury.
- 2 Return of indictment into Court.
- 3-4 Indictment for administering and causing to be administered drugs
- 5 and liquids with intent to procure abortion.
- 6-7 Arrangement and trial.
- 7-8 Verdict of Jury as follows:

IRA CRAWFORD, *Foreman.*"

- 8-9 Motion for new trial and in arrest of judgment and judgment over-
ruling the same.
- Judgment on verdict.
- 9-10 Bill of Exceptions.

ERRORS ASSIGNED.

- 1 The verdict is wholly insufficient and void.
- 2 The said Circuit Court erred in overruling said motion in arrest of judgment, and in entering judgment on said verdict.
- 3 Said Circuit Court erred in not sustaining said motion in arrest of judgment.
- 4 Said judgment is insufficient and void.
- 5 Said Circuit Court should have sustained said motion in arrest of judgment and discharged said plaintiff in error.

*Geo W. Pleunants &
J. B. Hurdley
Attys for Plff in Error*

10 P. B. 187.

William W. Armstrong

for

The People

Abstract

Filed Oct. 14, 1865
J. L. Caud clk.

ERRORS ASSIGNED.

State of Miners

Supreme Court April Term
A.D. 1865-

William W. Armstrong Plaintiff in Error

vs

The People of the State of
Miners Defendants in Error

Error to Rock Island

Manuscript of Record

Pleas before the Hon ble O. Wilkinson
Judge of the Sixth Judicial Circuit of
of the State of Illinois at a term of the
Circuit Court began and held at the
Court House in and for the County of
Rock Island and State of Illinois on the
second Monday the ninth day of
January A.D. 1865

Present Hon ble O. Wilkinson Judge
Charles C. Mendenhall Atty
Moses D. Merrick Sheriff
Samuel P. Rogers Clerk

Be it remembered that heretofore and at
a term of the Circuit Court began and
held at the Court House in the City of
Rock Island within and for the County
of Rock Island and State of Illinois on
the second Monday of the month of
September, being Monday the 12th September.

A.D. 1864 Present Hon John B. Thompson
Judge of 10th Judicial District of said State
sitting in exchange with Hon ble J. O.
Wilkinson Judge of the 6th Judicial District

Charles A. McLaughlin Sheriff
Edward H. Bowman Clerk for
Robert Thompson Dy Clerk

Empaneling of
Grand Jury at
Sept 5. 1864.

The Sheriff this day returned into Court
the venire of Grand jurors duly issued to
him and now filed herein, and of the
persons summoned as such, the following
appeared in answer to their names to wit:
Marcus B. Osborn, James E. Abbott
over

D W. Woodruff, M. Dorrance, Mark B. Wilson,
 St. F. Thomas, Elisha Devinney, M A Gaudel
 Michl. Hartzeed, John W. Spencer, Isaac Ayres
 Thos McCall Sr John B. Frick, John W. Gaudel
 Jacob M. Wilson, Timothy Dutton, John Ambaugh
 Jesse Tuttle, James Dickson and Andrew Devinney.
 And the Court appointed Marcus B. Osborn
 Foreman of said jury, and he as also the
 other of said jurors having been sworn by
 the Clerk, were charged as to their duties
 by the Court, and thereupon retired to their
 Jury Room in charge of the Sheriff to consider
 their duties"

And afterwards and on the thirtieth day of September
 - but A.D. 1864 in the same September Term aforesaid
 the following record was made and entered in

Return of Grand
 into Court.

said Court to wit: "This day came the Grand
 Jury into Court and presented the following bill
 of Indictment which is marked on the back
 "A True Bill Marcus B. Osborn Foreman of
 the Grand Jury" The People vs William W. Armstrong
 Indictment for attempting to procure abortion"

And which said indictment is in the words and
 following to wit:

Indictment.

"State of Illinois } Of the September Term of the
 Rock Island County Rock Island County Circuit
 in the year of our Lord one thousand eight
 hundred and sixty four

The Grand Jurors chosen
 selected and sworn in and for the County of
 Rock Island aforesaid in the name and
 by the authority of the People of the State of

Indict
(Continued)

Illinois upon their oaths present that William W. Armstrong late of the County of Rock Island aforesaid at and within the County of Rock Island aforesaid on the first day of July in the year of our Lord one thousand eight hundred and sixty four did then and there wilfully unlawfully and feloniously administer to and cause to be administered to and taken by one Sarah Jane Bryan a certain poisonous noxious and destructive substance to the persons aforesaid as yet unknown, with the intention thereby to procure the miscarriage of her the said Sarah Jane Bryan, she the said Sarah Jane Bryan being then and there a woman and then and there with child; 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

And the grand jurors aforesaid in the name and by the authority aforesaid upon their oaths aforesaid do further present that William W. Armstrong late of the County of Rock Island at and within the County of Rock Island aforesaid on the first day of June in the year of Lord one thousand eight hundred and sixty four wilfully unlawfully and feloniously did cause to be administered to and taken by one Sarah Jane Bryan a certain poisonous and noxious substance to the persons aforesaid unknown with the intention thereby to procure the miscarriage of her the said Sarah Jane Bryan she the said Sarah Jane Bryan then and there being a woman and then and there pregnant with child: 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 —

3. And the grand jurors aforesaid in the name and by the authority aforesaid upon their oaths ~~aforesaid~~ do further present that William W. Armstrong late of the County of Rock Island aforesaid at and within the County of Rock Island aforesaid on the first day of August in the year of our Lord one thousand eight hundred and sixty four did then and there unlawfully and feloniously cause to be taken by one Sarah Jane Bryan a certain poisonous and noxious liquid called Oil of Savin with the intention to procure the miscarriage of her the said Sarah Jane Bryan she the said Sarah Jane Bryan being then and there a woman and then and there with child; 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 —

And the grand jurors aforesaid in the name and by the authority aforesaid upon their oaths ~~aforesaid~~ do further present that William W. Armstrong late of the County of Rock Island aforesaid at and within the County of Rock Island aforesaid on the tenth day of August in the year of our Lord one thousand eight hundred and sixty four did then and there unlawfully wilfully maliciously and feloniously administer to and cause to be administered to and taken by one Sarah Jane Bryan a certain noxious and destructive liquid to the jurors aforesaid as yet unknown with the intention thereby then and there to procure the miscarriage of her the said Sarah Jane Bryan she the said Sarah

Page 5.
Indict
(Contn)

Jane Bryan then and there being a woman and then
and then with child: 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 —

And the grand jurors ^{aforsaid} in the name and by the authority afove
^{upon their oaths aforesaid} - said ^{also} further present that William W Armstrong late of the
County of Rock Island aforesaid at and within the County of
Rock Island aforesaid on the first day of June in the
year of our Lord one thousand eight hundred and sixty
four did then and there wilfully maliciously unlawfully
and feloniously cause to be administered to and taken by
one Sarah Jane Bryan a certain poisonous noxious and
destructive substance and liquid to the jurors aforesaid
unknown with intention ~~to~~ thereby to procure the miscar-
riage of her the said Sarah Jane Bryan the the said
Sarah Jane Bryan then and there being a woman and
pregnant with child: 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 —

William Bigelow
State attorney.

And on the back of said Indictment is endorsed
a follows: ^{"The People vs. William W Armstrong. Indictment"} Witnesses — "Phocian Bryan", "Jane M.
Bryan" — "Ann Jane Gordon" — "Sarah Gordon" — "Mary
McQuade" — "Catherine Fitzpatrick" — "Louis S. Knott" —
"Dr. John Farrell" — "Dr. A. J. Moore" — "Dr. Calvin Tins-
dale" ^{"A true bill. Agrees B. Osborn Foreman of the Grand Jury"} — "Filed 13th Sept 1864" — "E. Borman Clerk" —
"Copies instant" — Bail one thousand dollars —
— J. S. Thompson Judge &c. —

And afterwards and on the nineteenth day of September

" due form enters his plea of "not guilty" to the said
 " Indictment, and for trial puts himself upon the country,
 " and the People by the State attorney doth the like, and
 " thereupon to try the cause came a jury of good and
 " lawful men to wit: — Ostefield Gordon — Saml. Jones —
 " Frederick Hartman — J. A. Jordan — H. L. Abbott —
 " Patrick H. Wichee — William Bruner — Ira Cranford —
 " William Smith — Valentine O'Rourke — Robert Burns Senr. —
 " Nathaniel Fulson, who being duly selected and sworn
 " well and truly to try the issue joined as aforesaid and
 " having ^{heard} a portion of the evidence, and the hour of adjourn-
 " -ment having arrived, they were placed in charge of an of-
 " -ficer duly sworn and instructed by the court as to his duties
 " in that behalf, with directions to meet the court on tomorrow
 " morning at nine o'clock"

And afterwards and on the eighteenth day of January
 AD 1865 in the same January term aforesaid the following
 record was made and entered in said Court in said cause
 to wit: "At this day came again the said People by the
 " State attorney, and the defendant in person present as also
 " by his attorneys Pleasants and Hamley, and the jury em-
 " -pannelled herein on yesterday also came and having now
 " heard the evidence adduced and the arguments of counsel
 " and being instructed in writing by the Court, retired to
 " consider of their verdict, in charge of an officer duly sworn
 " and instructed by the Court as to his duties in that behalf,
 " and after a brief absence the jury returned into Court, in
 " charge of the officer — the State attorney, and the defendant
 " and his attorneys being also present — and the jury being
 " duly called presented the following verdict to wit: "The
 " People of the State of Illinois vs. William W. Armstrong, we
 " the Jury in the above case find the defendant guilty, and

Record of
 Trials

Verdict.

" fix his term of imprisonment in the Penitentiary at two
 " years, together with a fine of one hundred Dollars. Ira
 " Cranford Foreman" which said verdict is received filed
 " and entered and the said jury discharged - and thereupon
 " the defendant by his attorneys enters his motions for a new
 " trial and also in arrest of judgment herein"

Record of
 Motion for
 new trial &
 in arrest.

And afterwards and on the twentieth day of January
 AD 1865 in the same January term aforesaid the fol-
 lowing record was made and entered in said court in
 said cause to wit: " at this day came again the said
 " People by Wilson State's attorney as also the defendant
 " in person and by his attorneys and the defendant by
 " his attorneys stating to the court that they had no rea-
 " sons to present for their motion for new trial herein.
 " the said motion is by the court overruled. and the de-
 " fendant's motion in arrest of judgment being now
 " argued by counsel, and by the court duly considered,
 " is overruled by the court. the court approving the
 " said verdict and also adopting as its own finding.
 " the finding of said jury. imposing a fine upon said
 " defendant, and thereupon the defendant being now
 " here in court, and saying nothing further why judge-
 " ment should not be pronounced against him by the
 " Court herein, it is by the court considered, ordered and
 " adjudged that the defendant be committed to the
 " custody of the Sheriff, and be by said Sheriff deliv-
 " ered into the custody of the warden of the Penitentiary
 " at Joliet, and that he be by said warden confined
 " in said Penitentiary for the term of two years; two
 " days of which term to be in solitary confinement, and
 " the residue thereof at hard labor, and also that
 " the defendant pay unto the said People a fine of

" One hundred dollars, and also the costs of prosecution in
 " this behalf. — And on motion of defendant it is
 " ordered by the court that the Sheriff retain the custody of de-
 " fendant for ten days before proceeding to deliver him to the mar-
 " shal aforesaid to enable defendant to make application for a
 " writ of Habeas Corpus on this judgment from the Supreme Court"

And afterwards to wit on the same month day of
 January A.D. 1865 in the same January Term aforesaid
 the said defendant caused to be filed in said court
 his bill of exceptions herein, which is in the words and
 figures following to wit:

Bill of
 Exceptions

" State of Illinois, }
 " Rock Island County, } ss. "Of the January term of the Rock Island
 " The People of the State of Illinois, } County Circuit Court. A.D. 1865"
 " vs. }
 " William W. Armstrong. }

" Be it remembered that on the month day of Jan-
 " uary A.D. 1865 being one of the days of the above entitled
 " term of the above entitled court, and after the return of
 " the verdict of the jury in said case, the said defen-
 " dant entered & filed his motion in arrest of judgment
 " in said case, which said motion is in the words and
 " figures following to wit:

" State of Illinois }
 " Rock Island County } ss. "Of the January Term of the Rock Island
 " The People of the State of Illinois, } County Circuit Court A.D. 1865."
 " vs. }
 " William W. Armstrong. }

Motion in arrest
 of Judgment

And now comes the said Defendant and moves the Court

to arrest the Judgment herein, and for cause of such motion assigns the following" —

- 1st. Because the verdict rendered by the Jury herein is illegal and insufficient, the Jury having no power or authority to impose a fine upon said Defendants;
- 2^d. Because said verdict is absolutely void and insufficient to warrant or authorize any judgment of the Court thereon

Gro W. Pleasants &
J B Hamley
Attys for Defs.

" which said motion the Court then and there overruled
" the Court approving said verdict, and also adopting
" as its own finding the finding of said Jury, assessing
" a fine against said Defendants, and thereupon the
" Court rendered judgment upon the said verdict;
" to the overruling of which said motion, and the entering
" of judgment on said verdict, the said Defendants then
" and there at the time thereof excepted.
" and inasmuch as the said matters and things
" do not appear of record, the said Defendants prays
" that this his bill of exceptions may be signed and
" sealed and it is done"

Ira O. Wilkinson. *Exat*
Judge &c.

Bill of Costs.

And the following is a copy of the fee book, in said Court of the Costs in said Cause, to wit:

" The People	3	
" W.	3	
" Wm W. Armstrong	3	Rock Island County Circuit Court
	3	January Term, 1865.
		"
		Plaintiffs Costs.

" Clerk's fees — Docketing said — 20 cents — 20¢

" Exit Plff's appearance - 5 cents. - Attorney do - 10 cents - 15¢.
 " 4 Subpoenas \$1.40 - filing papers \$1.05 - \$2.45-
 " continuance - .20 - errand jury - .15 - 35-
 " errand witnesses - .50 - errand const to take chgs of jury 5: 55-
 " entering verdict - .10 - arraignment of Prisoner - .25: 35-
 " taking Recognizance - .30: copy of Indictment \$1.20: .. \$1.50
 " copy of Grand Jurors - 25- copy Petit Jurors - 25: 50
 " entering judgment - .25: Docketing - .10: satisfaction .15 - 50
 " order for Fieri Facias On Fine - 20: Fieri Facias - 40: 60
 " Docketing - 10: Sheriff's return - 10: filing - 5: 25-
 " Bill of Costs - 30: cert & seal - 35: copy 20: 85-
 8.25

" Sheriffs Fees: -
 " C.A. McLaughlin on Subpoenas \$ 8.75-
 " W.D. Merrill " " \$ 8.50
 " James O. Clay Mercer County \$ 2.35 19.60

" Defendants Costs.
 " Clerk Fees: 5 Subpoenas - \$ 1.75: 1.75
 " Manuscript of Proceedings - \$ 3.00: cert & seal - .35: 3.35-
 " errand witnesses - 40: 40

State of Illinois }
 Rock Island County } ss. I, Samuel P. Hodges clerk
 of the Circuit Court for said County do certify that
 the foregoing is a true transcript of the proceedings
 had in the cause of the People vs William W.
 Armstrong, as the same appears of record and by the
 papers filed in and said Circuit Court in said cause.
 Witness my hand and the seal of said circuit
 Court this 23^d day of January A.D. 1865.
 S P Hodges Clerk



Certificator

William W. Armstrong
187

People of State of Illinois
by
Transcript of
Record

Filed March 20. 1875
L. Leland
Clerk

they say that said proceedings are
proper and may be affirmed
Charles Edmundson
State Attorney