

14275


No. _____

Supreme Court of Illinois

^C
~~S~~hran et al

vs.

People

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

14275

No. 7-123

PEOPLE'S CAUSES.

1862

Schran

vs

People

Pepper

State of Illinois
County of Cook
City of Chicago

85.

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 K. 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:

2

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.	A. 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
Barbay 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-
lently did, contrary to the Statute, and against
the peace and dignity of the same People of the
State of Illinois.

Carlos 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. Krockenmuff,
Rosa Schaffer, Leo Schwarty.

Filed June 11th A. D. 1861.

J. K. C. Formst, Clerk.

5-

And afterwards to wit: at the October Term of said Court to wit on the ⁴Twenty Second day of October A. 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 came 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 *Mea non say*, that they are

9
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 Def-
endant *Barbay Schramm* by her Counsel and
he enters and files a Plea of abatement for misno-
mer, 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

ss.

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 appella-
tion 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 replications 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,
C. Howland,
W. H. Williams,

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

who being duly empanelled 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
Barbary 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
I, 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 Barbag 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. K. C. Forrest
Clerk

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

Barbory Schumann
vs
Alexander Schumann
of P.M. in Error
The People of the State of
Missouri
vs
Sept in Error

vs
Error to the Recorder's
Court of Cassings,
Indictment for Riot.

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

1. Trying all the defendants together upon the Indictment: instead of Barbara alone as 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
Plaintiff's Attorney,
Error in the foregoing.
Carlos Harris
State's Attorney

Arthur W. Windell
for P.M. in Error

There is no
Rec'd
Filed April 24 1862
at St. Louis
Mo.

Sub. Term 7-P.D.
Schumann
93.29
The People
Windell

In the Supreme Court of the State of Illinois
April Term A.D., 1866

Barbey Schram et al
vs
The People vs } Error to Recorders
} 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 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 their
part 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. Leland
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 Depts 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 infernal 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

7 P. 0
Barbuj 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 convicted - 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 constant 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 judgment to be rendered
was not respondeat osten
& therefore the court properly
rendered a judgment for
costs

Barb. Case, L 343

D. P. Jones
State Attorney

^{7 P. 2}
Barbary Schram
Hals Jus

The People &c

Points for Drift
in Error

Filed May 5th 1862
S. Leland
clerk

In the Supreme Court of the State
of Illinois

April Term A.D. 1862

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

The plea might even have
been confessed by Barbary
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 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 judgment to be rendered was not respondeat onsten & therefore the court properly rendered a judgment for costs.

Barb. Crim. L 343

D. J. Jones
States Atty.

Barbey ^{P.P.} Johnson
et al vs -

The People &c

Points 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 }
chal. 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 constant 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 jury due 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 & Reversal
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 ouster
therefore the court properly
rendered a judgment for costs
Barb, term 2 343

D. O. Jones
States Atty

7 P. 2
Barbey Schramm
et al vs

The People vs

Points for Drifts
in Error

Filed May 5th 1862
L. Deland
clerk.

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 oniter &
therefore the court properly
rendered a judgement
for costs Barb. Crim § 343

W. S. Jones
States Attorney

7. P. 20
Barbey Schram
Wall
vs.
The People &c

Wests Point

Filed May 5th 1862
D. Ireland
Clerk

Ch. 7 - P. D.

Abstr. & Part

Filed May 29, 1862
L. L. Linn
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.

In Supreme Court, Ottawa, April Term, 1862.

THE PEOPLE OF THE STATE OF ILLINOIS ON

COMPLAINT OF ANN M. PRIDE,

VS.

PETER KELLY.

Complaint for Bastardy.

APPEAL FROM PEORIA.

Page of
Record.

1 and 2

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

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

6

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

7 and 8

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

9

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

judgment, for the following reasons:

1st. Because the complaint is insufficient.

2d. Because the verdict is against law and evidence and the instructions of the court.

3d. Because the court had not authority to try the cause at a criminal term.

4th. Because the court misdirected the jury in matters of law, at the request of the people.

5th. Because there is no existing law under which the defendant can have judgment passed upon him on this verdict.

9
10 and 11
The court overruled the motions, and ordered defendant to pay for the support of the child until it should arrive at the age of seven years, fifty dollars per year, commencing on the 26th May, 1860, and that he should give bond to pay the same quarter yearly to the Judge of the Court of Probate of Peoria county, or his successor, &c., as provided by the act of March 3, 1845.

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

The bill of exceptions contains all the evidence.

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

On cross examination she stated:

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

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

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

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

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

16

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

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

Errors Assigned.

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

Points, Brief and Authorities.

1st. The verdict is against the evidence.

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

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

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

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

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

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

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

N. H. PURPLE,

Attorney for Appellant.

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4 People Exp⁵ R^D
Ann M. Clay

Peter Kelley

Abstract, Brief
& Points —

Filed Apr. 25 - 1862

L. Ireland

Clark