

No. 14536 $\frac{1}{2}$

Supreme Court of Illinois

Richardson

vs.

People

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 17

PEOPLE'S CAUSES.

Richardson
vs
People

1863

14536

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

ANDREW A. RICHARDSON	} <i>Appeal from La Salle County Circuit Court.</i>
<i>vs.</i>	
THE PEOPLE OF THE STATE OF ILLINOIS.	

BRIEF AND ARGUMENT FOR APPELLEE.

This was a complaint under the bastardy law.

Only one point is assigned for error by the appellant, namely, that the Court below erred in overruling his motion for a continuance.

We insist that the motion was properly overruled.

The affidavit was insufficient.

So far as the testimony of the witness Ole J. Halverson is concerned, it was not material.

He only expected to show by him that Martha Anderson, the complaining witness, and one Ole Rickleson, were in bed together, lying down together, *within two weeks* of the time when said Martha Ander-

son swears that said child was begotten. *Quære de hoc.* It was *within two weeks.* Was it two weeks before or two weeks *after* the child was begotten? *That* might make a difference, *perhaps.*

We insist that the affidavit does not show any *diligence* upon the part of the appellant. Below we subjoin the transcript of the justice, from which it appears that, although these *favorite witnesses*, John Johnson and Ole J. Halverson, were both sworn on the part of defendant below, before the justices, on the 21st day of July, A. D. 1862; yet the defendant was recognized to appear at the November term, A. D. 1862, of the Circuit Court of La Salle county.

The appellant was bound to get out subpoenas at that time, or in a reasonable time thereafter.

He did ^{not} use that diligence, and cannot complain here.
^

In Justice Court, before J. J. Millay, J. P., and Reuben Bronson, Associated J. P.

THE PEOPLE	} Charge of Bastardy, 1862, July 18th.
<i>vs.</i> ANDREW RICHARDSON.	

This day personally appeared Martha Anderson, of Adams, La Salle county, an unmarried woman, who being duly sworn, says: That on the first day of July instant, at the house of her father, in the county aforesaid, she was delivered of a male bastard child, and that Andrew Richardson, of the town and county aforesaid, is the father of said child. Thereupon a warrant is issued for the arrest of the said Andrew Richardson, and delivered to constable Thomas Iverson to serve.

July 19th. Warrant returned by constable, Thomas Iverson, with the said Andrew Richardson in custody before me.

Court adjourned till Monday morning at 8 o'clock, 21st inst.

July 21st. Court opened, calling Reuben Bronson, J. P., as associate.

Martha Anderson, Christian Olson, and Erasmus Nelson, sworn as witnesses and testified on the part of the People.

Christian Anderson, Ole Rickleson, Elias Anderson, Uen Rachel Anderson, Nelson Olson, Hálver Halverson, Ole R. Halverson, Eli M. Kinnie, John Johnson, Ole T. Sawyer, Charles Grover, John Larson, Halver Larson, and Peter Nelson, sworn and testified on the part of the defendant, Andrew Richardson, these being all the witnesses attending.

Upon hearing the evidence adduced, it is adjudged by the Court that the said Andrew Richardson is guilty of the charge alleged against him, and he is admitted to bail in good and sufficient security in the sum of one thousand dollars, to appear at the next term of the Circuit Court in and for said county.

J. J. MILLAY, J. P.

I hereby certify that the above is a true copy of the proceedings in the above case from my docket.

July 24th, 1862.

J. J. MILLAY, J. P.

It cannot be claimed that the defendant below took any advantage from the statute of May 3d, 1861.

That statute only provides for continuances where the *defendant* is in the public service of the country, and *not* where the witnesses may be in the army. We quote the act here :

AN ACT for the relief of the Volunteer soldiers of this State.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all actions now pending or hereafter pending in any of the courts of this state, or before any justice of the peace, it shall be a sufficient cause for a continuance, on motion of the defendant, if it shall be shown to the satisfaction of the court or justice that the defendant is in the military service of the United States or of this state, and that defendant's presence is in any degree necessary for

a full and fair defense of the suit. And in case of a continuance under the provisions of this act, the cost of the continuance shall abide the event of the suit.

§ 2. This act shall be in force from and after its passage.

APPROVED May 3, 1861.

These witnesses were in the county from the 21st of July, 1862, when the case was tried before the justices, until, as appears from the affidavit, some time in September, A. D. 1862, and two months before the Court was held.

Substantial justice has been done in the case, and this Court will not reverse this case for the ground assigned.

GRAY, AVERY & BUSHNELL,
Attorneys for Appellee.

Supreme Court

3^d Grand Division

Appl. Term A.D. 1863

Andrew A. Richardson

^{Att.}
The People &c.

Brief and Argument
for Appellee

Filed May 18. 1863

L. L. Leach ^{CLR}

May, Avery & Brewster

Attys. pro Appellee.

Supreme Court of the State of Illinois
April Term A.D., 1863

Richardson }
vs- }
The People }

Deft's Brief

The motion for a continuance was properly overruled.

1st Because the affidavit does not show that the witnesses were within the reach of the process of the Court

8 East 37
3 Burrows 1514
1 Wm Blackstone R 374
1 Map, R 6
2 Hale's 220
3 Brevard 304
1 Const. R 234
2 Sumner R 19

2nd Because no facts are
set forth showing diligence, or
that efforts to procure that
evidence would have been
unavailing

5 Leigh R 715

3^d Because it does not
appear that the defendant
~~expected~~ expected, or was able
to procure the attendance of
the witnesses at any succeeding
term

9 Dana 302

4th Because it does not appear
that the same facts which the
defendant swore he could
prove by the absent witnesses,
could not have been established
by the prosecutrix

D. P. Jones

State's Atty -

¹⁷
Richardson
ms

The Proper

Apples Buz

Filed May 13. 1863
Leland
cm

~~Opinion of the Court, delivered by~~
delivered the opinion of the Court;

Mr. Justice Walker,

It

~~Walker~~ ~~It~~ ^{is} ~~first~~ ~~objection~~ ~~is~~
is, that the court below erred in ~~an-~~
~~swering~~ ^{appellant's} ~~the~~ ~~defendants~~ motion for
a continuance. This depends upon the
sufficiency of the affidavit upon
which the application was based. The
affidavit does not state that any ^{efforts} ~~eff~~
~~was~~ ~~had~~ been made, or if made, that
they would have been ineffectual
to have procured the attendance of
the witnesses. It fails to state where
they were at the time of the applica-
tion; but simply, that they were
in ~~the~~ service in the United States
army. For aught that appears, they
may have been within the juris-
diction of the court. The court
cannot judicially know, that
the requirement to which they are
attached, is beyond the reach of its
process.

Again, there is no statement
that affiant had any expectation
of procuring the testimony of the
witnesses by the next term of the
court. It would be erroneous
to grant a continuance unless
there was a reasonable prospect

of obtaining the ~~evidence~~ desired
 evidence, ^{at some future time} unless the party can state
 that he has reasonable grounds
 to believe, that it can be made
 available, the party is in the situ-
 -ation of any party, ~~that~~ ^{who} is una-
 -ble to prove a fact for the want
 of evidence. The object of granting
 a continuance, is that justice
 may be had thereby, and not mere-
 -ly to prevent a recovery against the
 party. We think this affidavit
 fails to show the employment
 of proper diligence to have an-
 -thorized the court to allow the
 motion.

If it had appeared, that the wit-
 -nesses were so situated, that their
 attendance could not be procured,
 the appellant might have offered
 to join in a commission, to take
 their depositions. If it had appeared
 that the evidence was material,
 and that due diligence had been
 employed, and such an offer
 had been made, ^{in its discretion} the court, ~~would~~
 might, in case the other party had refused
 to join in the commission, have
 granted a continuance until they

from term to term until they
 did join in the commission.
 And if such an application
 and offer had been made, and
 accepted by the other party had
 accepted it, the court would have
 continued it until the next term.
 In cases of misdemeanors, depo-
 sitions of absent witnesses may
 be taken by consent. The King
vs. Mauphew, 2 Maule & Sel. 602. Res. ex
 crim. Ev. 55. ~~We do not wish to be~~
~~misunderstood as deciding, that depo-~~
~~sitions may be taken in a crim-~~
~~inal case, but only that the defen-~~
~~dant in a case of misdemeanor~~
~~may consent, to do so, and an~~
~~offer to do so compell the pros-~~
~~ecution to join in the commis-~~
~~sion or submit to a continuance.~~
 The appellant failed to show suffi-
 cient grounds for a continuance
 and the judgment is affirmed.
~~judgment aff.~~

~~In this opinion the whole court concurred~~

Judgment affirmed.

A Richardson

1702. vs 159

The People

Opinion by
Walling.

Recorded
page 687

continued

1
State of Illinois }
La Salle County } Pleas before the Honorable Madam
-or E. Hollister the Judge of the
Ninth Judicial Circuit of the State of Illinois
and the Presiding Judge of the La Salle County
Circuit Court, at a term of said court commenced
and held at the Court House in Ottawa on
Monday the 3^d day of November A.D. 1862 the
same being the first Monday in said month, and
of the Independence of the United States of
America the Eighty fifth Sixth.

Present the Honorable Madam E. Hollister

The Presiding Judge

Abraham B. Moore Clerk

Eri L. Waterman Sheriff

David P. Jones State attorney.

Be it remembered that on the 26th day of July
A.D. 1862, a transcript from the docket of J. J. Millay
a Justice of the peace, was filed with the Clerk of
said Court, in the words and figures following, to wit,

"State of Illinois } In Justice Court before J. J. Millay
La Salle County } J.P. + Andrew Brunson associated
J.P.

The People

Charge of Bastardy
Andrew Richardson 1862 - July 18th = This day personally
appeared Martha Anderson of Adams, La Salle County

Justices fees	2
Complaint	25
Warrant	25
Argument	15
Subpoena	25
Seizing 17 witnesses	85
Docketing	20
Judgment	25
Process out	1.00
Bond	50
One day at trial	2.00
Reuben Prousen } 1 day -	2.00
unmanned	7.70
Constable fees -	
Warrant	50
Meals	38
Custody	2.00
Subpoena mileage	2.73
	5.61
Witness fees,	
Peff	
Maurtha Anderson	50
Christian Olson	50
Erasmus Nelson	50
left	
Christytha Anderson	50
Ole Richardson	50
Elias Anderson	50
Mrs Rachel Anderson	50
Nels Olson	50
Halvor Halverson	50
Ole K. Halverson	50
Eli McKeime	50
John Johnson	50
Ole J. Sawyer	50
Charles Grover	50
John Larson	50
Halvor Larson	50
Peter Nelson	50
	8.50
Recapitulation	
Justices fees	7.70
Const "	5.61
Witness "	8.50
	21.81

an unmarried woman who being duly sworn says, that on the first day of July instant at the house of her father in the County aforesaid, she was delivered of a (male) bastard child and that Andrew Richardson of the town and county aforesaid, is the father of the said child, Whereupon a warrant is issued for the arrest of the said Andrew Richardson and delivered to constable Thomas Iverson to serve.

July 19th Warrant returned by constable Thomas Iverson with the said Andrew Richardson in custody before me. Court adjourned till Monday morning at 8 o'clock 21st inst.

July 21st Court opened calling Reuben Prousen J.P. as associate. Maurtha Anderson, Christian Olson, & Erasmus Nelson sworn as witnesses, and testified on the part of the People, - Christian Anderson, Ole Richardson, Elias Anderson, Mrs Rachel Anderson, Nelson Olson, Halvor Halverson, Ole K. Halverson, Eli McKeime, John Johnson, Ole J. Sawyer, Charles Grover, John Larson, Halvor Larson & Peter Nelson sworn and testified on the part of the defendant Andrew Richardson; there being all the witnesses attending. Upon hearing the evidence

adduced, it is adjudged by the Court, that the said Andrew Richardson is guilty of the charge alleged against him and he is committed to bail in good and sufficient security in the sum of one Thousand Dollars to appear at the next term of Circuit Court in and for said County

J. J. McIlroy J.P.

I hereby certify that the above is a true copy of the proceedings in the above case from my docket. July 24th 1860 J. J. McIlroy J.P.,

On the said 26th day of July AD 1862, a warrant was filed with the Clerk of said Court, in the words and figures following, to wit:

"State of Illinois } The People of the State of Illinois, to all
La Salle County } Sheriff, Clerks and constables within said
State, greeting;

Whereas, complaint, under oath, has been this day entered before the undersigned, a Justice of the Peace within and for said County, by Martha Anderson of the town of Adams, county aforesaid, that on the (1st)^{first} day of July AD 1862, in the town & county aforesaid she was delivered of a male bastard Child and that Aaron Richardson is the father of the said Child - You are therefore hereby commanded forthwith to arrest the said Aaron Richardson and bring him before me, or, in my absence, before some other Justice of the Peace in said County, to answer our said Charge and to be further dealt with according to law, and thereof make due Service and return as the law directs. Given under my hand and seal, at my office in Whitfield this 18th day of July AD 1862

J. J. McIlroy

Justice of the Peace (Sgd)

(- Here follows constables return upon said warrant -)

"Executed the within warrant by arresting the within named defendant and bringing him into Court this 19th day of July 1862

Fee Service 50c

6 miles 38

Custody 2.00

\$3.88

Shos Aaron Const,

On the said 26th day of July A.D. 1862, a certain bond was filed in the office of the clerk of the Circuit Court in the words and figures following, to wit;

"State of Illinois }
 La Salle County } Know all men by these presents
 Andrew A. Richardson and
 Andrew Richardson are held and firmly bound unto the
 People of the State of Illinois in the sum of one thousand
 dollars to be paid to the said People, for which payment
 well and truly to be made we bind ourselves our heirs, execu-
 tors and administrators jointly and severally, firmly by
 these presents, sealed with our seals and dated this 21 day
 July, 1862. Whereas complaint has been made before
 J. J. McIlroy one of the Justices of the Peace in and for
 said County of La Salle by Martha Anderson of Adams
 in said County an unmarried woman that on the first
 day of July 1862 she was delivered of a male, bastard
 child and that one Andrew A. Richardson is the father
 of the said - Whereupon the said Justice issued a warrant
 and caused the said Andrew A. Richardson to be brought
 before him to answer the said complaint and to be further
 dealt with according to Law, and upon examination
 of said Martha Anderson upon oath in the presence
 of the - Andrew A. Richardson touching the said charge
 and upon due consideration thereupon that the said
 Justice was of opinion that sufficient cause appeared
 and did adjudge and determine that the said Andrew
 A. Richardson enter a bond with good and sufficient
 security to appear at the next Circuit Court to be

5

held in and for the said county of La Salle to answer to said Charge. Now therefore the condition of this obligation is such that if the above bounded Andrew A. Richardson shall appear at the next Circuit Court to be held in and for said County of La Salle and answer to said Complaint, and not depart the court without Li then this obligation to be void otherwise to remain in full force and effect.

Andrew A. Richardson (seal)

Andrew ^{his} Richardson (seal)
must

Signed Sealed and Delivered in the Presence of
J. J. Willey J.P.

On the 7th day of November (Friday) being one of the days of the November Term of said Circuit Court for the year AD 1862, an order was entered of record in said Cause in the words and figures following, to wit;

"The People vs
81 vs
Andrew Richardson" Recognized for Pastarday
This day the defendant moves
the court for a continuance, which
motion is overruled by the Court.

The defendant being now enquired of and concerning the premises how he would acquit himself therein, for a plea says he is not guilty in manner and form as Charged."

On Saturday Novr 8. 1862. being one of the days of the said November term of said Court for said year a further order was entered of record in said cause in the words & figures following, to wit;

"The People &c }
81 20 } Recognizes for Bastardy
Andrew Richardson

This day the People came by the ^{and St. Gray their attorneys} State attorney, and the defendant by Brown & Rice his attorneys, and thereupon came the following jurors of a jury to wit; Harvey McPherson, Alexander Wanger, Moody Clark, John Huston, W. Reisinger, Samuel Patterson, Silas Hale, Patrick Hayes, Abner Hollister, William Barger, John Shulen, and John Lambert who are duly elected, tried and sworn to tell and truly by the issue herein and a true Verdict render according to the law and the evidence. And after hearing the testimony and arguments of counsel the jury retire to consider of their Verdict; and after due deliberation therein had, return into court the following verdict to wit; "We the jury find the defendant guilty of the Charge of bastardy."

Defendants counsel now move the court for a new trial.

7
Here follows a true copy of the instruction given by
the court to the jury, on the part of defendant
viz:

Given
"Will the court instruct the jury that if,
the jury, after examination of the evidence in
this prosecution, have a reasonable doubt as
to whether the defendant is the father of the
Child of Martha Andersen, the complaining witness,
then the jury cannot find the defendant guilty;

On the 10th day of November 1862. being one of
the days of the November term of said Court for
said year a further order was entered of record
in said Cause, in the words and figures following
to wit;

"The People &c
81 w
Andersen Richardson } Recognized for Bastardy.

It is ordered by the Court
that the defendant's motion for a new trial be overruled.

It is therefore considered and adjudged by the
Court that the defendant pay for the first year
after the birth of the Child the Sum of Eighty
five dollars, and the Sum of thirty five dollars
a year for nine years succeeding said first year
for the Support, maintenance and education
of such Child, also the costs of this prosecution;
And that said defendant, be required to give bond

with sufficient Security to be affirmed by the Judge of this Court for the payment of the said Sum of money so ordered to be paid as aforesaid, by the Court, and that the bond be filed in the County Court,

It is therefore considered by the Court, that the People of the State of Illinois have and recover of the defendant their costs and Charges by them ^{in this cause} herein ~~of~~ ^{expended}, and that they have execution therefor.

The defendant by his counsel now prays an appeal herein to the Supreme Court of this State, which is granted, upon condition that the defendant enter into a bond in the penal sum of five Hundred dollars, the bond and bill of Exceptions to be filed in twenty days from and after the adjournment of this Court."

On Monday February 2^d 1863. the same being one of the days of the Feb^y Term of said Court for said year, the following proceedings were had, ^{in said cause} viz;

The People vs on Complaint of	} Bastardy
Martha Anderson	
vs	
Andrew Richardson	

It appearing to the Court that the defendant is in default of a bond, on motion of the People by O. C. Gray their attorney it is ordered that a Capias issue for the defendant to answer for his Contempt."

9

On Saturday, February 7.th 1863, ^{one of the days of said Feb. term of said Court,} a final order was entered of record in said Cause in the words and figures following to wit;

"The People &c on complaint
of Martha Anderson }
vs } Bastardy.
Andrew Richardson }

On motion of the defendant
by J. B. Rice his attorney, it is ordered that he
have leave to file a new appeal bond bond herein
and also to withdraw from the files the old appeal
bond."

On the 8th day of December A.D. 1862, there
was filed with the clerk of said Court a
certain bill of exceptions in the words figures
following, to wit;

"State of Illinois } Circuit Court of said County
Law Salle County } November Term A.D. 1862

The People of the State of Illinois }
vs } Bastardy
Andrew A. Richardson }

Be it remembered
that on the sixth day of November A.D. 1862, the
same being one of the days of said November
term 1862. Andrew A. Richardson the said defendant

did by his attorney move the court to continue this cause until the next term of this court and in support of his said motion the said defendant read to the court his affidavit, which said affidavit is in the words & figures following to wit;

The People vs
 Andrew A. Richardson
 La Salle County Circuit
 Court,
 November Term A.D. 1862

Andrew A. Richardson
 the defendant in the above entitled cause
 being duly sworn saith that John Johnson,
 and Ole Halverson are each material witnesses
 for defendant in the trial of the above entitled
 cause, that he expects & believes that he can prove
 by said Johnson that on the same night in which
 the child of Martha Anderson the foregoing
 witness was begotten according to the testimony
 which she gave before the examining magistrate
 which testimony affiant believes she will again
 give on the trial of this cause that said Johnson
 went to the bed of said Martha Anderson and
 had sexual intercourse with her, and also
 that on the same night Christopher Anderson
 had sexual intercourse with said Martha Anderson
 that he expects & believes that he can prove
 by said Halverson that said Martha Anderson
 and Ole Rickerson were in a bed together lying
 down together within two weeks of the time when

said Mountha Anderson says & swears that said Child was begotten, John Johnson is about 22 years old said Rickelsen is a man about twenty years old; that he knows of no other witnesses by whom he can prove the same facts.

Both said Johnson & said Halvorsen are now in the service of the United States in the 3^d regiment raised by the board of trade of Chicago, affiant believes it to be the 82nd regiment of Illinois  affiant does not know where said regiment now is, but both of said witnesses enlisted as private soldiers in said regiment in the month of September last and have ever since been absent from this county, and by reason of the fact that said witnesses are in the service of the government as soldiers it has been impossible for affiant to procure their attendance at this term of this court,

Andrew A. Richardson

Subscribed & sworn to before me }
this Sixth day of November 1862 }
J. J. Mclay J.P. }

Therefore the court overruled defendants said motion for a Continuance to which ruling of the court in overruling said motion the defendant then & there excepted & said defendant prays the court to sign & seal this bill of exceptions which is accordingly done.

W. E. Hollister Judge 

Be it remembered that a certain appeal bond was filed in said cause on the 7th day of February 1863 as after November 10th 1862, which is in the words and figures following to wit;

"I know all men by these presents that we Andrew Richardson as principal and Andrew Anderson as surety are held and firmly bound unto the People of the State of Illinois in the penal sum of Five hundred dollars goods and lawful money of the United States to the payment of which well and truly to be made we bind ourselves, our heirs executors and administrators and every of them jointly by these presents.

Witness our hands and seals this 10th day of November A.D. 1862.

The condition of this obligation is such that whereas the People of the State of Illinois did on the tenth day of November A.D. 1862 recover a judgment against the above bounden Andrew Richardson for the use of Martha Anderson in the Circuit Court of the county of La Salle & State of Illinois in a certain charge of bastardy made by the said Martha Anderson against the said Andrew Richardson was adjudged to pay the the People of the State of Illinois for the use of the said Martha Anderson the sum of Eighty five dollars for the first year after the birth of the

child and the sum of thirty five dollars a year for nine years succeeding said first year and the costs of the prosecution, and the said Andrew Richardson having prayed and obtained an appeal from the said Circuit Court to the Supreme Court of said State of Illinois.

Now if the said Andrew Richardson shall prosecute his appeal with effect and shall pay or cause to be paid said judgment and costs of prosecution and all damages or so costs which said Supreme Court may adjudge against him then this bond shall be void & of no effect otherwise to stand in full force and effect.

Witness J. B. Rice } Andrew A. Richardson 
 Andrew ^{his} Richardson  "mark"

State of Illinois }
 La Salle County } " I Abraham B. Moore Clerk
 of the Circuit Court in & for said
 County do hereby certify that the above and foregoing
 comprises a full and complete copy of the files
 and of the record of proceedings had in the above
 named cause.

Witness my Hand and the Seal of said Court
 at Ottawa this 22nd day of April A.D. 1863
 Abraham B. Moore Clerk

C. H. Hook Deputy

And now comes the said Andrew
A Richardson by J. B. Rice his
attorney says: there is error in ~~error~~
the record & proceedings aforesaid in
this to wit

1st The Court in overruling defendants
Motion for a continuance ~~in the court.~~
~~court.~~ & in overruling Motion for new trial

2nd The Court erred in rendering
judgment against the said plaintiff
in error & for other errors & says
the judgment be reversed J. B. Rice
att. for plff. in error

And now comes the said Defendant
in error & says: there is no error in
the record & proceedings aforesaid
O. C. Gray
att. for Deft. in error

17-154
The People *vs*
ATS *v*

Andrew Richardson

Certified copy of Record
~~~~~

Filed Apr. 23. 1863.  
L. Seland  
Clk.

\$3<sup>50</sup> fees paid by  
Chas. D. Rice

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

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|                               |   |                   |                                |
|-------------------------------|---|-------------------|--------------------------------|
| ANDREW RICHARDSON,            | } | <i>Appellant,</i> | } <i>Appeal from La Salle.</i> |
| <i>vs.</i>                    |   |                   |                                |
| THE PEOPLE OF THE STATE       | } |                   |                                |
| OF ILLINOIS, <i>Appellee.</i> |   |                   |                                |

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## ABSTRACT OF RECORD.

- 2 Transcript of Justices docket.
- 3-4 Summons. Bond.
- 5 Motion for continuance.
- 7-8 Judgment of Circuit Court.
- 9 Bill of exceptions, as follows:
- 10 Motion to continue cause.

In support of which motion the defendant read an affidavit, which is in the words and figures following:

|                       |   |                                       |
|-----------------------|---|---------------------------------------|
| THE PEOPLE, &c.,      | } | <i>La Salle County Circuit Court,</i> |
| <i>vs.</i>            |   |                                       |
| ANDREW A. RICHARDSON. | } | <i>November Term, A. D. 1862.</i>     |

Andrew A. Richardson, the defendant in the above entitled cause, being duly sworn saith, that John Johnson and Ole Halverson are each

material witnesses for defendant on the trial of the above entitled cause; that he expects and believes that he can prove by said Johnson that on the same night in which the child of Martha Anderson, the prosecuting witness, was begotten, according to the testimony which she gave before the examining magistrate, which testimony affiant believes she will again give on the trial of this cause, that said Johnson went to the bed of said Martha Anderson, and had sexual intercourse with her; and also, that on the same night, Christopher Anderson had sexual intercourse with said Martha Anderson; that he expects and believes that he can prove by said Helverson, that said Martha Anderson and Ole Rickleson were in a bed together, lying down together, within two weeks of the time when said Martha Anderson says and swears that said child was begotten. John Johnson is about 22 years old, and said Rickleson is a man about 20 years old; that he knows of no other witnesses by whom he can prove the same facts. Both said Johnson and said Helverson are now in the service of the United States, in the third regiment raised by the Board of Trade of Chicago. Affiant believes it to be the 82d Regiment of Illinois Volunteers. Affiant does not know where said regiment now is; but both of said witnesses enlisted as private soldiers in said regiment in the month of September last, and have ever since been absent from this county, and by reason of the fact that said witnesses are in the service of the Government as soldiers, it has been impossible for affiant to procure their attendance at this term of this Court.

ANDREW A. RICHARDSON.

Subscribed and sworn to before me this sixth day of November, 1862.

J. J. MELLAY, *J. P.*

#### POINTS.

The Court ought to have sustained the motion for continuance.

The affidavit shows that it was impossible for defendant to have obtained the testimony of Johnson and Helverson in time for the November term, 1862, when this cause was tried. The affidavit also shows that the testimony of said witnesses was material, and would have enabled the defendant to make a good and valid defense to the complaint against him.

J. B. RICE,  
*Appellant's Attorney.*

17 H P.D.

Richardson

<sup>as</sup>  
People

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Abstract &  
Brief

Filed May 12 1863  
L. Leland  
Clerk

Supreme Court 3<sup>d</sup> Division

And ~~in~~ Richardson }  
as } Appeal from La Salle  
The People }

Plaintiff's argument

By Statute of May 3<sup>rd</sup> 1861

Provides that in all actions in any of the Courts of this State it is provided that it shall be sufficient cause for continuance on motion of the defendant if it shall be shown to the satisfaction of the Court, that the defendant is in the military service of the United States or of this State and that defendant's presence is in any way necessary to a full and fair defense of the suit

This act was passed by the Legislature to provide for the rights of <sup>Litigants</sup> ~~Citizens~~, during the existence of the present war. During the existence of the present war many terms of the Circuit Courts have not been held for the reason that so many were necessarily absent in the army that the courts saw that the testimony of witnesses could not be obtained.

The presence of witnesses at a term of Court is usually more necessary on the trial of a cause

than the presence of the parties themselves and although the Statute above refers to to defendants in an action alone, yet the reason for which the law was passed applies as well to a cause for continuance for <sup>the</sup> reason that witnesses are absent in the service of the United States

We think that the fact that the witnesses were absent in the army is a good cause for continuance. The affidavit shows that the issuing subpoenas would have been of no use for the witnesses were and had been for a long time without the reach of the process of the Court. The issuing of subpoenas under such circumstances would have done nothing but put the party to additional expense.

The affidavit shows good cause for a continuance - it shows that the testimony of the absent witnesses was material and would have made a good and valid defense to the Complaint - It also shows that the testimony of the witnesses could not have been obtained in time for the Nov. Term 1869.

The Appeller may insist that the affidavit ought to state the facts more in detail. It is true that it might have been stated in the affidavit that the summer

term of the Circuit Court for 1862 was not held because the people of the County were all busily engaged in raising their quota of troops. It might also have been stated that scarcely any legal business was done during the summer and early part of the fall of 1862. It was unnecessary to state these facts. It is well known that it is an impossibility to obtain the deposition of a soldier while in the service of the United States - No person can be found to act as Commissioner, and the witness is not in one place long enough for one party to give notice to the opposite party and send the Commissioner to the Commissioner.

This is a case where the testimony of the complaining witness is the sole person in interest is by necessity the only evidence upon which the people can make a case. The defendant in such a case should be allowed a reasonable opportunity to obtain the testimony of his witnesses -

We think the affidavit is sufficient and that the judgement of the Court ought to be reversed and a new trial granted -

17 P.D. 154.

Andrew A. Richardson

The People

Appellants  
Brief

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Filed May 21st 1883  
L. Leland  
Clerk

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

APRIL TERM THEREOF, A. D. 1863.

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|                                         |                                                         |
|-----------------------------------------|---------------------------------------------------------|
| ANDREW A. RICHARDSON                    | } <i>Appeal from La Salle County<br/>Circuit Court.</i> |
| <i>vs.</i>                              |                                                         |
| THE PEOPLE OF THE STATE<br>OF ILLINOIS. |                                                         |

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## BRIEF AND ARGUMENT FOR APPELLEE.

This was a complaint under the bastardy law.

Only one point is assigned for error by the appellant, namely, that the Court below erred in overruling his motion for a continuance.

We insist that the motion was properly overruled.

The affidavit was insufficient.

So far as the testimony of the witness Ole J. Halverson is concerned, it was not material.

He only expected to show by him that Martha Anderson, the complaining witness, and one Ole Rickleson, were in bed together, lying down together, *within two weeks* of the time when said Martha Ander-

son swears that said child was begotten. *Quæere de hoc.* It was *within two weeks.* Was it two weeks before or two weeks *after* the child was begotten? *That* might make a difference, *perhaps.*

We insist that the affidavit does not show any *diligence* upon the part of the appellant. Below we subjoin the transcript of the justice, from which it appears that, although these *favorite witnesses*, John Johnson and Ole J. Halverson, were both sworn on the part of defendant below, before the justices, on the 21st day of July, A. D. 1862; yet the defendant was recognized to appear at the November term, A. D. 1862, of the Circuit Court of La Salle county.

The appellant was bound to get out subpoenas at that time, or in a reasonable time thereafter.

*not*  
He did use that diligence, and cannot complain here.

*In Justice Court, before J. J. Millay, J. P., and Reuben Bronson, Associated J. P.*

|                    |                                        |
|--------------------|----------------------------------------|
| THE PEOPLE         | } Charge of Bastardy, 1862, July 18th. |
| <i>vs.</i>         |                                        |
| ANDREW RICHARDSON. |                                        |

This day personally appeared Martha Anderson, of Adams, La Salle county, an unmarried woman, who being duly sworn, says: That on the first day of July instant, at the house of her father, in the county aforesaid, she was delivered of a male bastard child, and that Andrew Richardson, of the town and county aforesaid, is the father of said child. Thereupon a warrant is issued for the arrest of the said Andrew Richardson, and delivered to constable Thomas Iverson to serve.

July 19th. Warrant returned by constable, Thomas Iverson, with the said Andrew Richardson in custody before me.

Court adjourned till Monday morning at 8 o'clock, 21st inst.

July 21st. Court opened, calling Reuben Bronson, J. P., as associate.

Martha Anderson, Christian Olson, and Erasmus Nelson, sworn as witnesses and testified on the part of the People.

Christian Anderson, Ole Rickleson, Elias Anderson, Uen Rachel Anderson, Nelson Olson, Halver Halverson, Ole R. Halverson, Eli M. Kinnie, John Johnson, Ole T. Sawyer, Charles Grover, John Larson, Halver Larson, and Peter Nelson, sworn and testified on the part of the defendant, Andrew Richardson, these being all the witnesses attending.

Upon hearing the evidence adduced, it is adjudged by the Court that the said Andrew Richardson is guilty of the charge alleged against him, and he is admitted to bail in good and sufficient security in the sum of one thousand dollars, to appear at the next term of the Circuit Court in and for said county.

J. J. MILLAY, J. P.

I hereby certify that the above is a true copy of the proceedings in the above case from my docket.

July 24th, 1862.

J. J. MILLAY, J. P.

It cannot be claimed that the defendant below took any advantage from the statute of May 3d, 1861.

That statute only provides for continuances where the *defendant* is in the public service of the country, and *not* where the witnesses may be in the army. We quote the act here :

AN ACT for the relief of the Volunteer soldiers of this State.

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly,* That in all actions now pending or hereafter pending in any of the courts of this state, or before any justice of the peace, it shall be a sufficient cause for a continuance, on motion of the defendant, if it shall be shown to the satisfaction of the court or justice that the defendant is in the military service of the United States or of this state, and that defendant's presence is in any degree necessary for

a full and fair defense of the suit. And in case of a continuance under the provisions of this act, the cost of the continuance shall abide the event of the suit.

§ 2. This act shall be in force from and after its passage.

APPROVED May 3, 1861.

These witnesses were in the county from the 21st of July, 1862, when the case was tried before the justices, until, as appears from the affidavit, some time in September, A. D. 1862, and two months before the Court was held.

Substantial justice has been done in the case, and this Court will not reverse this case for the ground assigned.

GRAY, AVERY & BUSHNELL,  
*Attorneys for Appellee.*

~~154~~ 17 189  
Supreme Court  
3<sup>d</sup> Grand Division  
April Term 1863

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Andrew A. Richardson  
vs.  
The People &c.

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Brief & Argument  
for Appellee

Filed May 18. 1863  
J. L. Leach

Emy. Avery & W. W. W. W.  
Atty. pro Appellee

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

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|                         |   |                   |   |                              |
|-------------------------|---|-------------------|---|------------------------------|
| ANDREW RICHARDSON,      | } | <i>Appellant,</i> | } | <i>Appeal from La Salle.</i> |
| <i>vs.</i>              |   |                   |   |                              |
| THE PEOPLE OF THE STATE | } | <i>Appellee.</i>  |   |                              |
| OF ILLINOIS,            |   |                   |   |                              |

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## ABSTRACT OF RECORD.

- 2 Transcript of Justices docket.
- 3-4 Summons. Bond.
- 5 Motion for continuance.
- 7-8 Judgment of Circuit Court.
- 9 Bill of exceptions, as follows:
- 10 Motion to continue cause.

In support of which motion the defendant read an affidavit, which is in the words and figures following:

|                       |   |                                       |
|-----------------------|---|---------------------------------------|
| THE PEOPLE, &c.,      | } | <i>La Salle County Circuit Court,</i> |
| <i>vs.</i>            |   |                                       |
| ANDREW A. RICHARDSON. | } | <i>November Term, A. D. 1862.</i>     |

Andrew A. Richardson, the defendant in the above entitled cause, being duly sworn saith, that John Johnson and Ole Halverson are each

11 material witnesses for defendant on the trial of the above entitled cause; that he expects and believes that he can prove by said Johnson that on the same night in which the child of Martha Anderson, the prosecuting witness, was begotten, according to the testimony which she gave before the examining magistrate, which testimony affiant believes she will again give on the trial of this cause, that said Johnson went to the bed of said Martha Anderson, and had sexual intercourse with her; and also, that on the same night, Christopher Anderson had sexual intercourse with said Martha Anderson; that he expects and believes that he can prove by said Helverson, that said Martha Anderson and Ole Rickleson were in a bed together, lying down together, within two weeks of the time when said Martha Anderson says and swears that said child was begotten. John Johnson is about 22 years old, and said Rickleson is a man about 20 years old; that he knows of no other witnesses by whom he can prove the same facts. Both said Johnson and said Helverson are now in the service of the United States, in the third regiment raised by the Board of Trade of Chicago. Affiant believes it to be the 82d Regiment of Illinois Volunteers. Affiant does not know where said regiment now is; but both of said witnesses enlisted as private soldiers in said regiment in the month of September last, and have ever since been absent from this county, and by reason of the fact that said witnesses are in the service of the Government as soldiers, it has been impossible for affiant to procure their attendance at this term of this Court.

ANDREW A. RICHARDSON.

Subscribed and sworn to before me this sixth day of November,  
1862. J. J. MELLAY, J. P.

#### POINTS.

The Court ought to have sustained the motion for continuance.

The affidavit shows that it was impossible for defendant to have obtained the testimony of Johnson and Helverson in time for the November term, 1862, when this cause was tried. The affidavit also shows that the testimony of said witnesses was material, and would have enabled the defendant to make a good and valid defense to the complaint against him.

J. B. RICE,  
*Appellant's Attorney.*

17 to P.O.  
Richardson  
People

Abstract & prints

Filed May 12, 1873  
L. Leland  
Clerk