

14378

No. \_\_\_\_\_

# Supreme Court of Illinois

Augler

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vs.

People

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
THIRD GRAND DIVISION.

People's Causes.

No. 5

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

*Vol. 1, 864*

*W. L. Eger*

*78*

*People*

State of Illinois, Supreme Court, ss.---Third Grand Division.

April Term, A. D. 1864.

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CHARLES AULGER,  
VS.  
THE PEOPLE OF THE STATE OF ILLINOIS. } ERROR TO TAZEWELL.

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ABSTRACT OF RECORD.

Page of Record.

This was an indictment in the Circuit Court of Tazewell County, against the Plaintiff in error, for sending a challenge to fight a duel: The indictment was found at the September Term, 1862, and before Judge Harriott and a jury—cause tried at February Term, 1863—verdict “*guilty*.” Motion made for new trial. Motion heard at June term, 1863, and overruled.

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Proceedings at September Term, A. D. 1862. Venire for Grand Jury.

3 to 6

The indictment charging Charles Aulger with sending a challenge to Asa S. Smith, to fight a duel with a knife, on the 8th of July, 1862, at Tazewell County. The indictment sets out the challenging, which appears in the bill of exceptions, and charges that the challenge was sent to Asa S. Smith.

6 Indorsement of Grand Jury.  
 7 Copies issued in said cause.  
 8 Return of copies and proceedings at February Term, 1863.  
 9 Arraignment of Aulger. Plea of not guilty; trial—verdict of Jury, guilty.—  
 Motion for new trial.  
 9 to 10 Proceedings at the June Term, 1863. Motion for new trial overruled. Plaintiff  
 in error excepted.  
 10 Judgment of Court—fine twenty-five dollars and costs of suit.

BILL OF EXCEPTIONS.

13

1 to 14

INSTRUCTIONS OF THE PROSECUTION.

To the testimony and instructions the Plaintiff in error then and there excepted.

14 to 15

DEFENDANT'S INSTRUCTIONS.

Verdict of the Jury—guilty.  
 Motion for new trial. Motion overruled.  
 Signature of Court to bill of exceptions.  
 Certificate of Clerk to the Record.

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ERRORS ASSIGNED:

- 1st. The Court admitted improper evidence.
- 2d. The Court erred in overruling motion for new trial.
- 3d. The Record shows that the judgment of the Court was manifestly wrong, and that the evidence was insufficient to sustain said verdict, and that great injustice was done to the Plaintiff in error.

E. C. INGERSOLL,  
 S. D. PUTERBAUGH,  
 For Plff. in Error.



State of Illinois, Supreme Court, ss.---Third Grand Division.

April Term, A. D. 1864.

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CHARLES AULGER, }  
vs. } ERROR TO TAZEWELL.  
THE PEOPLE. }

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BRIEF AND POINTS FOR PLAINTIFF IN ERROR.

The Plaintiff in Error was indicted for sending a challenge to Asa S. Smith to fight a duel. It appears from the record that the supposed challenge was directed to A. C. Smith, instead of Asa. S. Smith, as charged in the indictment.

THE ERRORS ASSIGNED ARE :

- 1st. The Court admitted improper evidence.
- 2d. The Court erred in overruling the motion for a new trial.

Upon the first point, the Court will see at a glance that the letter, which purports to be the challenge, was improperly admitted in evidence. The indictment charges that the letter was *directed to Asa S. Smith*, and by Aulger *sent to Asa S. Smith*. The letter offered in evidence was directed to "A. C. Smith." If the letter was sent to Asa

S. Smith by a wrong name, that fact should have been averred and proven. There was no averment nor proof of this kind.

The indictment purports to set out the letter verbatim. The Court will find upon examination, in the 8th line, on page 5, of the record, the word "fears" appears in the letter set out in the indictment, and in the letter offered in evidence, the word "prars" (prayers) is used instead of "fears." This is clearly a variance, and is therefore fatal.

The words, "to the tenor and effect following," in the indictment, bind to an exact recital. *I. Starkee, on Er., 478*, and the cases there cited. A variance in a word would be fatal,—same authority.

There was no proof that Aulger ever sent the letter. The evidence is that he wrote it, and McGee delivered it to Asa S. Smith, a different person than the one to whom it was directed; but there is <sup>no</sup> evidence that Aulger gave the letter to McGee, or authorized McGee to deliver the letter to Smith. Without this evidence the letter should not have gone to the jury.

Upon the second assignment of error the Court below erred in overruling the motion for new trial. The evidence was wholly insufficient to sustain the charge. In addition to the want of the proof above referred to, there was no evidence of the kind of knife proposed to be fought with, nor that the same was a deadly weapon; and that the probable consequence of the fighting would have been the death of either of said parties. These facts are averred in the indictment, and are material, and should have been proven. A knife, *per se*, is not a deadly weapon.

At the time the letter was written Aulger was not able to fight a duel; he was just able to set up. He was very much irritated upon the subject of his difficulty with Smith, who stabbed him. It was a mere ebullition of passion. He certainly could not have intended it as a serious challenge, when in fact he was not able to fight a duel.

In the letter, Aulger says: "It appears that a knife is your favorite of settling fusses, and if so be the case you can consider that it will suit me." This is a mere expression of a willingness to accept a challenge, and does not amount to a challenge. *2 Archbold Crim. Pr. 236-15. Com. vs Tibbs, 1 Dana Rep. 524.*

On these grounds we confidently ask for a reversal of said judgment.

E. C. INGERSOLL,  
S. D. PUTERBAUGH,  
For Plff. in Error.

5-124  
Charles Aulger  
vs  
The People

Brief & Points  
for Plead in Error

Filed Sept. 17. 1863.  
Shelburne  
Vt.

Supreme Court of the State of Illinois  
April Term 1864

Charles Sulger }  
vs, } Error to Faywell  
The People &c. }

Points & Authorities for Defts. in Error

The first point made by the plaintiffs in error is that the indictment charges that the letter was directed to Asa S. Smith and sent by Deft. to him, while the proof shows that it was directed to A. C. Smith

The indictment in fact charges that the defendant "wickedly and maliciously intending and designing" & & "said Asa Smith maliciously violently & wickedly to kill and murder, & he the Sulger his said intentions and designs the sooner to completely perfect and put in practice, did unlawfully and wickedly provoke and excite the said Asa S. Smith to fight a duel against him the said Charles Sulger" &c, "and that the

said Charles Sulzer a certain  
challenge in the name of the said  
Charles Sulzer, in the form of a letter  
to the said Asa S. Smith directed,  
did then and there wickedly and  
diabolically write and cause to be  
written" - setting out the letter in  
hæc verba. It further charges  
that "said challenge so as aforesaid  
written and delivered directed by  
the said Charles Sulzer afterwards",  
sc, maliciously & wickedly, to the said  
Asa S. Smith did send & deliver" &c,

There is no variance in names,  
between the letter set out in the indict-  
ment & that in evidence

It would perhaps be more formal  
to explain by innuendo who is meant  
by "Mr Smith" & "A S Smith" the  
names appearing at the commence-  
ment and close of the letter, but  
the charge that the defendant  
intended and designed to kill and  
murder the said Smith & that to  
carry out such intention & design  
he provoked and excited him to  
fight a duel, & that the letter was

It appears very probable from an inspection of the ~~second~~ transcript of the letter that the original is very blindly written & I apprehend that the variance in the word fears or prars, if any there is any, was occasioned by the clerk in copying

It is claimed that the evidence does not show that the defendant proposed to fight with a deadly weapon, or that the probable consequences would have been the death of either party, or that the challenge was seriously intended

The jury properly inferred all this from the tenor of the letter & the fact that the defendant had recently been stabbed by Smith & was very much excited in consequence at the time of writing the letter

D. P. Jones  
States Attorney

sent to Asa S. Smith, renders it unnecessary

The offense consists in challenging  
not in sending a challenge  
Crim. Code Sec. 44

The challenge may be oral or  
in writing and no particular  
form is necessary, nor is a  
mistake in the name of a person  
to whom it was sent, or the effect  
which it had, or was likely to  
have, material, provided, it was  
the intention of the person sending  
it to challenge the other to fight a  
duel.

It was alleged & proved that the  
letter was sent & delivered to Asa  
S. Smith & the evidence showed  
beyond doubt that it was intended  
by the defendant for him

The defendant's orthography does  
not correspond with Webster's,  
but he has evidently adopted the  
phonetic system & spells Asa thus  
ac

572D  
Charles Butler

vs -

The People &c

Peoples Rights

Filed April 30. 1864  
J. Secord clerk

1  
Heas.

To a Term of the Circuit Court begun and held at the Court House in Pekin, within and for the County of Tazewell and State of Illinois, on the first Monday of the month of September A. D. 1862. Present, Honorable James Harriott Judge of the 2<sup>d</sup> Judicial Circuit of the State of Illinois, composed of the Counties of Mason, Tazewell &c. Chapman Williamson Sheriff and George H. Harlow Clerk

Be it remembered, that on the 1<sup>st</sup> day of September A. D. 1862, it being the first day of said term of said Court, the following proceedings were had, to wit:—

The Sheriff of Tazewell County, returned into Court a venire from the Board of Supervisors of said County, which said venire is in the words and figures following, to wit:—

State of Illinois, ss. The People of the State of Illinois, to the Tazewell County Sheriff of said County, Greeting:  
You are hereby commanded to summon the following named persons if they shall be found in your County, to be and appear before the Circuit Court of said County at or before 10 o'clock of the first day of the next regular term thereof

to be held at the Court House in the Town of Pekin  
in said County on Monday the 1<sup>st</sup> day of  
September next to serve as Grand Jurors, to wit:-

- |                    |                |                 |
|--------------------|----------------|-----------------|
| Wm Darnell         | Joel W. Clark  | A. R. Green     |
| P. G. H. Railsback | Lawson Holland | John W. Kinstry |
| Clark Barton       | A. S. Mren     | Wm Dillon       |
| Wm D. Higgins      | James K. Pugh  | John Dillon     |
| A. B. Marley       | Emch Runyon    | Benj Parker     |
| Alfred Bright      | Saml Roads     | L. Stockwell    |
| Stephen Robert     | A. Bradley     | Daniel Trail    |
| Charles Andrews    | Wm Roberts     |                 |



Given under my hand and seal of  
the County Court of said County at  
Pekin this 1<sup>st</sup> day of July A. D. 1862.

John Bradley Clerk  
per E. Rhodes Deft

Said venire is endorsed as follows, to wit:

This writ has been duly executed by summoning  
all of the within named Grand Jurors.

August 30<sup>th</sup> 1862.

C. Williamson Sheriff, D. C.  
By Wm Gaither Deput

For reasons satisfactory to the Court  
Alfred Bright was excused from serving on the  
Grand Jury at the present Term. Whereupon the  
Sheriff summoned J. C. Parkhart to appear and  
serve as Grand Juror in place of said Alfred  
Bright excused as aforesaid. Thereupon the Court

appointed Joel W. Clark Freeman of the Grand Jury, who together with the said Wm Darnell P. E. A. Railsback, Clark Barton, Wm D. Higgins R. B. Marley, Stephen Robert, Charles Andrew, Lawson Holland, H. A. Wren, James K. Pugh, Enoch Runyon, Saml Rhoads, A. Bradley, Wm Roberts, H. R. Green, John McKinstry, Wm Dillon John Dillon, Benj Parker, S. Estkivell, David Nail and J. B. Pinkhard were duly empaneled sworn and charged as a Grand Jury of Inquest in and for the County of Dazewell and State of Illinois, and retired to their room accompanied by the proper officer in charge to consider of presentments

It appearing to the Court that there is no prosecuting attorney present at this Term of the Court, the Court thereupon appointed Caesar A Roberts, Prosecuting Attorney pro tem for the present Term of this Court.

Now afterwards, to wit: on the 5th day of said month, it being the 5th day of said Term the following proceedings were had, to wit:

Now on this day comes the Grand Jury and in open Court make the following presentment, to wit:

State of Illinois }  
 Dazewell County }  
 Of the September Term of the Dazewell Circuit Court in the year of our Lord 1862.

The Grand Jurors chosen selected and sworn in and for the County of Dazewell, in the name and by the authority of the People of the State of Illinois upon their oaths present, That Charles Sulger on the Eighth day of July in the year of our Lord one thousand eight hundred and sixty two, at and within the County of Dazewell and State of Illinois being a person of wicked and malicious disposition, and a common duellist fighter, and disturber of the peace of the said people, not having the fear of God before his eyes but being moved and seduced by the instigation of the devil on the day and year aforesaid with force and arms at the county and State aforesaid, wickedly and maliciously intending and designing as much as in him lay, not only to disquiet and terrify one Asa E. Smith, but also the said Asa Smith maliciously, violently and wickedly to kill and murder, and for the said Charles Sulger, his said malicious and wicked intentions and designs the sooner to complete, perfect and put in practice, afterwards, to wit: on the day and year aforesaid, with force and arms at the County and State aforesaid, did unlawfully and wickedly provoke and excite the said Asa E. Smith to fight a duel against him the said Charles Sulger with a knife, the same being a deadly weapon the probable consequence of fighting with which might be the death of either of the said parties, and that he the

said Charles Sulger, a certain challenge in the name of the said Charles Sulger, in the form of a letter to the said Mrs. B. Smith directed, did then and there maliciously, wickedly and diabolically write and cause to be written and which said letter to the tenor and effect following, that to say, July the 8 1862. Mr. Smith Sir In regard to your fears that have proved in vain your victim still lays before you yet a man who professes to be a christian and will come home and sharpen up his knife and take his boys along to see him murder a man do you call that a christian act. Your intention was to kill me and the Mackinaw to receive my body. You have said that it would be a grate deal better for you if I would die and I expect that it would, for if I had of died the boys would hang you without Jug or Jura, a man how will boast of running his wife into a man show that he is a christian. You have said that you expected you had got yourself into trouble and I would not wonder and you had, but it appears that a wife is your favorite of setting fire. and if so be the case, you can consider that it will suite me. You go a coward, and darsent to except of the offer I want the same chance of sharpening my knife. You can set your day and I will be on hands, I new nothing of your intention. I did not no that you intended to murder

me, com up like a man. Chouse your man  
and I will chouse mine this thing must be  
setled I am not a covered a praining man  
a good exampell to set befoar his childrain  
Take them along to see him murder a man  
your friend. Charles Aulger

A. C. Smith you wanted to see me when I was  
about dead, I suppose you wanted to no if you  
had finished the the job. Now I will soon be  
abill to see you and faze you like a man."

Which said Challenge so as aforesaid  
written and directed be the said Charles Aulger  
afterwards, to wit: on the day and year aforesaid  
at the County and State aforesaid, maliciously  
and wickedly to the said Csa C. Smith did  
send and deliver and cause to be sent and delivered  
to the great damage and terror of him the said  
Csa C. Smith to the evil example of the said People,  
and 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.

Cassas A. Roberts State Attorney  
pro tem for the 31<sup>st</sup> Judicial Circuit  
of the State of Illinois

Which said Indictment so presented as aforesaid  
is endorsed as follows, to wit:

"~~And~~ People vs Charles Aulger, Indictment for

7  
sending a challenge to fight a duel.

A True Bill

Joel W. Clark Foreman of the Grand Jury

Witnesses -

Asa B. Smith, Wm Short, Andrew Muckey

Now afterwards, to wit: on the same day  
a copias was issued in said cause, which said  
copias is in the words and figures following, to wit:

State of Illinois vs The People of the State of  
Dazuell County Illinois. To the Sheriff of  
said County, Greeting:

We command you that you take the body of  
Charles Sulger if found in your County, and  
safely him keep, so that he be and appear before  
the Circuit Court of Dazuell County at the  
Court House, in Pekin, in said Dazuell County  
instanter to answer unto the People of the State of  
Illinois, for and concerning the charge of sending  
a challenge to fight a duel, as by a certain Bill of  
Indictment preferred against him by the Grand  
Jury of said Dazuell County in that behalf appear.  
And have you then and then this writ, with an  
enforcement thereon in that manner you shall  
execute the same.

Attest George A. Hasler Clerk of said Court and the seal  
of said Court at Pekin in said County, this 5 day of September, A.D. 1862.

Geo. A. Hasler Clerk

per J. P. Smith's deputy

which said capias was returned with the following endorsement, to wit:

"This writ has been duly executed by taking the within named Charles Dulger and bringing him into Court.

Sept 5th 1862,

C. Williamson Shff. C.

By Mr. Gaither deputy

Now afterwards, to wit: on the 6th day of said month of September 1862, it being the 6th day of said Term, the following proceedings were had, to wit:

6th day

Saturday September 6th 1862

The People } Indictment for sending a  
Charles Dulger } challenge to fight a duel

This cause is ordered to be continued

Now afterwards, to wit: at a Term of the Circuit Court begun and held at the Court House in Pekin within and for the County of Tazewell and State of Illinois on the first Monday of the month of February A. D. 1863. Present Hon. James Harriott Judge of the 21st Judicial Circuit of the State of Illinois, Abraham Berger States attorney, James B. Hopkins Sheriff and George H. Harlow Clerk, the following proceedings were had, to wit:

5 day                      Wednesday February 4th 1863.

The People                      ) Indictment for sending a  
 Charles Kulger                      ) challenge to fight a duel

Now on this day comes as well the People by their attorney Bergen, as the said defendant attended by his counsel, and the said defendant being duly arraigned upon said indictment for plea saith that he is not guilty in manner and form as charged therein, whereupon came a Jury of twelve good and lawful men, to wit: Jesse Black, H. A. Cash, W. B. Gales, Samuel Dariman, N. S. Fisher, J. W. Miles, A. F. Smith, W. W. Gowdy, Edward Harney, David Shurtliff, Jesse Broadridge and Rufus Lovejoy, duly selected, tried and sworn who having heard the allegations and proofs of parties and argument of counsel thereon, for verdict say, That the Jury find the defendant guilty in manner and form as charged in the indictment; Whereupon the defendant entered his motion for a new trial.

Now afterwards, to wit: at a Term of the Circuit Court, begun and held at the Court House in Pekin within and for the County of DeKalb and, State of Illinois on the first Monday of the month of June A. D. 1863. Present Hon. James Harriott Judge of the 21<sup>st</sup> Judicial Circuit

10  
of the State of Illinois, Abraham Bergen States  
Attorney, James S. Hawkins, Sheriff and George  
A. Harlow Clerk, the following proceedings were  
had, to wit:

2<sup>nd</sup> day.

Tuesday June 2<sup>nd</sup> 1863,

The People )  
                  ) Indictment for sending a  
                  ) challenge to fight a duel  
Charles Sulger )

Now on this day comes as well  
the People by their attorney Bergen, as the said  
defendant by his counsel, and this cause coming  
on to be heard upon the motion for a new trial  
and the Court having heard argument of counsel  
thereon and being fully advised in the premises  
is of opinion that said motion be overruled,  
to the overruling of which motion the defendant  
shew and there excepted. It is therefore ordered and  
adjudged by the Court that the People of the State  
of Illinois have and recover of the said defendant  
a Fine of Twenty five dollars and costs of suit,  
and that they have execution therefor.

Now afterwards, to wit, on the 8<sup>th</sup> day of  
June A. D. 1863, a Bill of Exceptions was filed in said  
cause, which said Bill of Exceptions is in the  
words and figures following, to wit:

State of Illinois } Circuit Court  
 Pazerwell County } June Term 1863.

The People } Indictment for sending  
 Charles Sulger } challenge to fight a duel

Be it remembered that at the trial of this cause at the February Term A.D. 1863, the People called as a witness Asa B. Smith who testified that on or about the 1<sup>st</sup> day of July A.D. 1862, he had a difficulty with defendant, that defendant struck him, and that he (witness) then stabbed defendant with a knife, and that afterwards, on or about the 8<sup>th</sup> of July A.D. 1862, at Pazerwell County, aforesaid, he witness received a letter from the defendant by the hands of Andrew McFee in the handwriting and bearing the signature of the defendant. The defendant admitted that the letter was written by him. The People then offered in evidence the letter referred to by witness Smith as follows, to wit:

July 18 1862

Mr Smith I've in regard to your prars that have proved in vain your victom still lay stay befoar you yet am an bo profiege to be a ristian and will com home and sharpen up his wife and take his boys along to see how ~~me~~ murdered am an do you call that a cristian act Your intention was to kill <sup>me</sup> and the mack naut to

rece mi boda you have sad that it wood be  
 a grate deal beter for you if i wood di and I  
 expect that it wood for if i had of dide the boys  
 wood brag you without jug or jura a man  
 ho will boast of ruining his wife into a man  
 show that he is a cristian you have sad that  
 you expected that you had got your self if in to  
 trubell and I wood not wonder and you had  
 but it apears that a wife is your faverite  
 of setting fuses and if so bea the case you can  
 cow sider that it will sute me ~~you~~ as you  
 ar a coward and dar sent to ~~except~~ except  
 of the offer, i want the same chause of sharping  
 mi wife you can set your day and I will be  
 on hans I new nothing of your intention I did  
 not no that you in tentended to murder me  
 cov up like a man chouse your man an I will  
 chuse mine this thing must be setled i am not  
 a coward a praing man a good exampell to set  
 befor his childrain takethem along to see him  
 murder ~~a~~ a man

Your friend

Charles Sulgar

ac Smith

you wanted to see me when I  
 I was about dead I suppose you wanted to no  
 if you had finished the sole now I will soon be abell  
 to see you and fase you like a man

The Plaintiff here rested the case.

13 The defendant called Doctor J. P. Ferris, who testified that he was a physician, and as such attended on the defendant after he had been stabbed by Asa S. Smith, that the wounds received were very severe but not mortal that the defendant was confined to his bed for several weeks, that at the time the letter was written the defendant was still suffering from the effects of the wound received from Smith, that defendant was then getting better, and was able to get up occasionally. That defendant appeared to be very much irritated upon the subject of the difficulty with Smith. Upon cross examination of the People, witness stated that he did not consider the defendant insane. This was all the evidence offered in said cause.

The People then asked for the following instructions which were given by the Court,

1<sup>st</sup> If the Jury believe from the evidence that the defendant challenged Smith to fight a duel with any deadly weapon the probable issue of which might result in the death of either, they should find the defendant guilty as charged in the indictment

2<sup>nd</sup> The Court instructs the jury that no provocation will afford a lawful excuse to any person for challenging another to fight a duel

3<sup>rd</sup> " No particular form of words is essential to  
" constitute a challenge to fight a duel

4<sup>th</sup> " The Court instructs the Jury further that  
" every man is presumed to be sane and  
" reasonable until the contrary is proved  
" And that the defense of insanity is not sufficiently  
" made out unless the mind of the defendant was  
" in such a state that he could not distinguish  
" between right and wrong as to the act with  
" which he is charged.

To the testimony and  
instructions the defendant then asked these  
excepted.

The defendant then asked for the following  
instructions which were given.

1<sup>st</sup> " The Court instructs the Jury that if they believe  
" from the evidence that the challenge (if they believe  
" the letter amounts to a challenge) was written and sent  
" by the defendant at a time when he was indeed sick  
" from a wound or stab received from the hands  
" of Smith, and that at the time he wrote, he was  
" not conscious of what he was doing or insane as to  
" that particular subject it is the duty of the Jury  
" to acquit the defendant.

2<sup>nd</sup> " The Court instructs the Jury that if they

believe from the evidence that the defendant was  
in such a situation that he was unable to fight  
a duel, and that it was only a mere ebullition  
of passion, and not intended as a serious  
challenge, they will find the defendant not guilty

15  
The Court instructs the Jury that expressing a  
readiness to accept a challenge, does not amount  
to a challenge

The Court instructs the Jury that a person may  
be sane upon some questions and insane  
upon others, and if the Jury believe from all  
the evidence that Colver was insane upon the  
subject of a trouble with Smith and under  
such circumstances, sent the challenge in  
question they will find the defendant not guilty

The Jury returned a verdict of guilty. The  
defendant thereupon moved the Court for a new  
trial, on following grounds.

- 1<sup>st</sup> The verdict of Jury was against the law and evidence,
- 2<sup>nd</sup> The verdict was unjust.

held at the June Term A.D. 1863, on the 2<sup>d</sup> day  
of June this cause was heard upon said motion  
for new trial - The Court overruled the said motion,  
to which ruling defendant thereupon excepted,  
and presents this his bill of exceptions and prays  
that the same may be signed and sealed by the

16.  
Court, and it is accordingly done.

James Harriott (seal)

State of Illinois v.  
Sagewell County

I, George H. Harlow Clerk of  
the Circuit Court within and for said County  
do hereby certify that the foregoing 15 pages contain  
a full true and complete transcript of the Record  
of proceedings had in the cause therein named  
as fully as the same appears of Record in my office.  
Witness my hand and the seal of said  
Circuit Court here affixed at Potosi  
in said County this 16th day of  
June A.D. 1867.

Geo. H. Harlow Clerk  
per S. P. Grissel Deputy

Let a supersedeas issue bond  
two hundred dollars Paris Stevens  
surety

J. H. Cannon



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Errors assigned by <sup>aff in</sup> Error

1<sup>st</sup> The Court admitted improper evidence.

2<sup>nd</sup> The Court erred in overruling motion for new trial

B. D. Peterbaugh  
Atty for Aff in Error

Joinder in Error

By D. Jones  
States Attorney

pg. 5

Charles Auger

The People

Rec'd & Emrs

Filed Sept. 17. 1863

S. Island  
Ct.