

No. 14298

# Supreme Court of Illinois

People

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vs.

Kelly

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E OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 51403

PEOPLE'S CAUSES.

People  
vs.

Kelly

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.

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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.

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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.

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

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?

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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

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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.

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.

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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.



Proceedings before the Circuit Court of Peoria County,  
in the State of Illinois, at a criminal term thereof,  
on the tenth day of June A.D. in the year of our Lord  
one thousand eight hundred and sixty one, in a  
certain cause wherein the People of the State of Illinois  
were plaintiffs, and Peter Kelly was defendant.

Be it remembered that heretofore to wit;  
on the twenty first day of August A.D. 1860. there was  
filed in the office of the Clerk of the Circuit Court  
of said County, a Transcript, together with a Complaint  
and writ, all of which are in words and figures.  
Following to wit:

Transcript

State of Illinois }  
Peoria County } S.S.

In Justice Court before  
Edson Wilder. Justice

Ann M. Priddy

vs.

Peter Kelly

In Bastardy

Warrant issued against Peter Kelly  
August 3<sup>d</sup> 1860. on the Complaint on Oath of

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Ann M. Pride made before the said Justice.  
August 9th 1860. Defendant arrested and warrant  
returned by Noah Marshall. Constable and def.  
in Court. Constables fees on warrant \$0.75

Def. arraigned upon the Charge as stated  
in the warrant of arrest, and having the same  
read to him plead thereto not guilty.

Ann M. Pride sworn and examined in relation  
to said Charge in the presence of def., after such  
examination and upon due consideration it was  
adjudged and determined by the said Justice, that  
the def. enter into bonds with good and sufficient  
security for his appearance at the next term of the  
Circuit Court to be held for the said County of Peoria  
and there to answer said Charge.

Whereupon the said def. entered into bonds of  
\$500.00 with Joseph Gates and William Y. Harvey  
as security.

Costs

Complaint 25.	Warrant 25	=	50
Docketing suit 12½	1 Oath on ex 6	=	19
Order & Judgt. 35.	Recognizance 50	=	75
			\$ 1.44
Constables Cost			75
			\$ 2.19

Edson Wilder  
Justice of the Peace

State of Illinois

Peoria County I.S.S. I, the subscriber a Justice of

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The Peace in and for the said County do certify that the foregoing transcript and papers annexed contain a full and perfect statement of all the proceedings and of the order and judgment before me in the above entitled cause.

Dated the 18<sup>th</sup> day of August 1860

Edson Wilder

Justice of the Peace

Complaint

State of Illinois

Peoria County, S.S. Ann M. Pride being first duly sworn deposes and says that she is an unmarried woman and was such unmarried woman at the time of the event hereinafter mentioned, that on or about the 26<sup>th</sup> day of May A.D. 1860, <sup>at the town of Medina in said County</sup> she was delivered of a male child and that Peter Kelly is the father of such child, which said child is a bastard.

Subscribed and sworn before me this 3<sup>d</sup> day of August A.D. 1860.

Ann M. Pride

Edson Wilder.

Justice of the Peace

Writ.

State of Illinois

Peoria County, S.S.

The People of the state of Illinois, To all. Sheriffs, Coronors. and Constables in the state of Illinois. Whereas Ann M. Pride of the town of Akron in the said County, an unmarried woman

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has this day made Complaint under oath before Edson Wilder a Justice of the Peace <sup>and for</sup> in said County that on or about the 26<sup>th</sup> day of May A. D. 1860. at the Town of Medina in said County she was delivered of a male bastard child and that Peter Kelly is the father of the said child.

We therefore Command you to arrest the said Peter Kelly and bring him before the said Justice or in case of his absence before any other Justice of said County to be dealt with according to law.

Given under the hand and the seal of the said Justice the 3<sup>d</sup> day of August A. D. 1860.

Edson Wilder  
Justice of the Peace

(Which said Writ was Endorsed as follows)

I have served the within warrant by arresting the said Peter Kelly Aug. 9<sup>th</sup> 1860.

Noah Marshall Const.

Fees 75 Cents

And afterwards to wit; on the 16<sup>th</sup> day of June, A. D. 1861, there was filed in the office of the Clerk of the Circuit Court, a Declaration, in words and figures as follows, to wit:

Declaration

State of Illinois }  
County of Peoria } Peoria Circuit Court  
June (Criminal) Term A. D. 1861

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The People of the state of Illinois

vs.  
Peter Kelly

And now come the said People of the state of Illinois, and on the relation of Ann M. Pride Charge against the said Peter Kelly, that the said Ann M. Pride was on and before the 26<sup>th</sup> day of May, A.D. 1860. an unmarried woman, that on the said 26<sup>th</sup> day of May A.D. 1860. at and within the said County of Peoria and State aforesaid the said Ann M. Pride was delivered of a male child, which said child was then and there a bastard, and that the said Peter Kelly was then and there and is the real father of the said child: and that the said child is still living, and this they are ready to verify, wherefore they pray the judgment of the Court here in the premises, according to the statute in such case made and provided

Manning & Ingersolls

Attys for Plfs.

And on the aforesaid 6<sup>th</sup> Day of June, A.D. 1861. there was filed in the office of the clerk of said Court, a demurrer in words and figures as follows; to wit:

The People of the State of Illinois

vs.  
Peter Kelly

In the Circuit Court  
of Peoria County

Complaint for Bastardy

And now comes the Defendant and says that the



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this bill of exceptions which is done  
C. N. Powell

Proceedings at a term of the Circuit Court begun and held at the Court House (for Criminal business) in the City and County of Peoria, State of Illinois, on the first Monday in the month of June in the year of our Lord One thousand Eight hundred and sixty one, it being the third day of said month - Present, the Honorable Elisha N. Powell, Judge of the 16th Judicial Circuit in said State, Alexander M. Coy States attorney, James Stewart Sheriff and Enoch P Sloan Clerk to. to wit:

Thursday June 6th A.D. 1861.

The People of the state of Illinois  
vs. Bastardy  
Peter Kelly.

This day came the People by Manning & Ingersoll, and the Defendant by Purple & Grove, and this cause come on to be heard on the demurrer of Defendant to the complaint filed herein, and the Court being fully advised in the premises overruled said demurrer. The Defendant then entered his plea of Not Guilty. The parties being ready for trial it is ordered by the Court that a jury be impannelled to try the issue herein, whereupon come a jury of twelve good and lawful men. to wit: John Keller Wm Bryden Sr. James Crow, M. M. Blanchard,

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this bill of exceptions which is done  
C. N. Powell

Proceedings at a term of the Circuit Court begun and held at the Court House (for Criminal business) in the City and County of Peoria, State of Illinois, on the first Monday in the month of June in the year of our Lord One thousand Eight hundred and sixty one, it being the third day of said month - Present, the Honorable Elisha N. Powell, Judge of the 16th Judicial Circuit in said State, Alexander M. Coy States attorney, James Stewart Sheriff and Enoch P Sloan Clerk to. to wit:

Thursday June 6th A.D. 1861.

The People of the state of Illinois  
vs. Bastardy  
Peter Kelly.

This day came the People by Manning & Ingersoll, and the Defendant by Purple & Grove, and this cause come on to be heard on the demurrer of Defendant to the complaint filed herein, and the Court being fully advised in the premises overruled said demurrer. The Defendant then entered his plea of Not Guilty. The parties being ready for trial it is ordered by the Court that a jury be impannelled to try the issue herein, whereupon come a jury of twelve good and lawful men. to wit: John Keller Wm Bryden Sr. James Crow, M. M. Blanchard,

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S. M. Doop, W<sup>m</sup> Henly, B. A. Smith, James Sleeth  
J. H. Morse, Jas. P. Kingsley, Philip F. Elliott &  
W. R. Kellogg, who were duly sworn to well and truly  
try according to the law and the evidence whether the  
Defendant in this cause is the real father of the boy  
child or not as charged in the Complaint, in this cause  
said jury not having heard all the evidence in the  
case were adjourned to meet the court at eight o'clock  
to morrow morning.

Friday June 7th A.D. 1861.  
The People of the State of Illinois  
vs. Bastardy.  
Peter Kelly

This day came the parties to this  
cause by their attorneys, and the jury impannelled  
on yesterday to try this cause also come, and the  
said jury having heard all the evidence in the case  
the argument of Counsel and the instructions of the  
Court, upon their oaths aforesaid do say "the jury in  
the case of the People against Peter Kelly, render as their  
verdict that Peter Kelly is the real father of the child  
born of Ann M. Pride as charged in the Complaint"

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And afterwards, to wit: on the 10<sup>th</sup> day of June A. D. 1861. there was filed in the office of the clerk of said Circuit Court, a motion for a new trial and in arrest of judgment, in words and figures as follows, to wit:

Motion

The People of the	}	In the Circuit Court
State of Illinois		
vs.		
Peter Kelly	}	of Peoria County

Complaint for Bastardy

The Defendant enters a motion for a new trial, in arrest of judgment in this cause for the following reasons.

- 1<sup>st</sup> Because the Complaint is insufficient
- 2<sup>nd</sup> Because the Verdict is against law and Evidence and the instructions of the Court
- 3<sup>rd</sup> Because the Court has not authority to try this Cause at a Criminal Term,
- 4<sup>th</sup> Because the Court misdirected the jury in matters of law upon request of the People.
- 5<sup>th</sup> Because there is no Existing law under which the Defendant can have judgment passed upon him upon the verdict

C. H. Purple Defts atty

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After which further proceedings were had in  
said Court, in said Cause, in words and  
figures as follows, to wit:

Monday June 10. th A. D. 1861.

The People of the  
State of Illinois

vs  
Peter Kelly as Bastardy

This day came the Defendant by  
Purple his attorney and enters his motion on arrest  
of judgment and for a new trial. And the Court  
having heard the arguments of Counsel, and being  
fully advised in the premises overruled said motion  
It is therefore considered and adjudged by the  
Court that the said Defendant shall pay for the  
support maintenance & education of said child  
the sum of fifty dollars per annum for the period  
of seven years, said seven years commencing on  
the twenty sixth day of May A. D. 1860. and it  
is further considered and adjudged by the Court  
that the said Defendant shall give bond & security  
forthwith for the due and faithful payment of said  
sum of money to be paid by him for the period  
aforesaid, which shall be made payable quarter  
yearly to the Judge of the Court of Probate of Peoria  
County and State of Illinois to his successor in  
office: And in case said Defendant shall

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fail and neglect to give such bond and security it is ordered and adjudged by the Court, that he shall be committed to the jail of said County there to remain until he shall comply with this order and judgment or until otherwise discharged by due course of law. It is further ordered and adjudged by the Court that the plaintiff shall have and recover their costs in this cause and have execution therefor.

Monday June 17th A.D. 1861.

The People of the  
State of Illinois

vs

Pastardy

Peter Kelley

This day came the Defendant by his attorney and prayed an appeal to the Supreme Court of this State which is allowed on Defendant giving bond in the Penal sum of seven hundred dollars payable as the law directs with Adam Gales as security, which said bond shall be filed with the Clerk of ~~said~~ <sup>this</sup> Court in twenty days.

And on the said 17th day of June A.D. 1861, there was filed in the office of the Clerk of said Circuit Court, in said Cause a Bill of Exceptions in words and figures as follows, to wit:

The People of the  
State of Illinois upon the  
Complaint of  
Ann Maria Pride

In the Circuit Court  
of Peoria County

vs.  
Peter Kelly

Complaint for Bastardy

Be it remembered that upon this day, this cause came on to be tried and the People to maintain the the issue on their part called Ann Maria Pride who being sworn stated - 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,

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 I cant tell how long I lived in that state;  
 I did not know Peter Kelly then. I said I  
 had know Peter Kelly a year. did not I say so  
 The child was born the 26<sup>th</sup> of May 1860.  
 I cant 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  
 blackberrys 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 dont know how many  
 times, a good many I dont know where; ~~the~~  
 up stairs or some where 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 dont know  
 any thing when the child was begotten - Last time  
 he ever had Connection with me was the time out  
 in the bushes He did, not do any thing 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 2 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?

I never talked with any body about this matter since last trial - never talked with any body 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 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 dont come that way every year, they Change sometimes in leap year. I dont remember whether 1849 was leap year or not. There are 30 weeks in a year. I am 31 Years old - I can not 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 Wileys in 1860. I dont know the month - I was sworn here in February 1860.

I cannot tell the meaning of an Oath I dont know that I can tell what it means I have heard something about a God I think I am acquainted with him I dont know how long it

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is since I made his acquaintance. I dont know as I have seen him. I had no conversation in particular with him that I know of. I dont know what Perjury means - I dont 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 didnt 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.

Orza A. Pride called by the People stated

I am a brother to Ann, W. Pride - We came to Illinois in 1852 and to Georgia 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 fathers house about a year from the 1<sup>st</sup> of April 1859, to April 1860 - He was unmarried at the time and boarded in Fathers 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 <sup>there</sup> alone, she had a child the 26th May 1860.

On Cross Examination He stated -

I knew of his going out riding with her once in the fall of 1839, dont remember where they went how long they were gone or when they returned - and he once went and brought her home from Mrs 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 in her lap - sometimes when I had been spanking the school marm down below I would go up stairs to go to bed and find Peter Kelly & 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 was Mr Keach and Mr. Cline

But they all appeared to be after the school marm did not seem to pay much attention to my sister except just to say how she do? &c. She appeared bashful didnt use to say much, some of these young men sometimes staid all night.

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This was all the evidence

At the Request of the People the Court instructed the Jury as follows,

The Court instructs the Jury that if they believe from the evidence beyond a reasonable doubt that Ann Maria Pride was delivered of a child & that the said child is now living, & that the Defendant Peter Kelly is the father of said child & that said Ann Maria Pride was at the time that the said child conceived and delivered was an unmarried woman & that two years have not elapsed since the birth of said child to the commencement of this prosecution - then they should find that the said Defendant is the real father of the said child.

If the Jury believe from the evidence that the Defendant is the father of a bastard child in manner as charged in the declaration filed in this cause, they should find the issue in this cause for the Plaintiff.

A mere possibility of the defendant's innocence is not sufficient to create a reasonable doubt of his guilt: the reasonable doubt must arise out of the unsatisfactory nature of the evidence it must be such a doubt as would induce a reasonable man to say upon all the evidence given "I am not satisfied that the defendant is guilty."

The question which the jury is to determine in this case is whether Peter Kelly is the real father of the a bastard child born of Ann M. Prude.

To the giving of which instructions the Defendants counsel then and there at the time the same were given objected and excepted.

The Court at the Request of the Defendants instructed the Jury as follows.

The People

vs Complaint for Bastardy

Peter Kelly

Instructions asked by the Defendant

1<sup>st</sup>. That in this case, although the Complaining Party is a competent witness, yet her credibility is to be left to the Jury.

2<sup>nd</sup>. That unless the Plaintiff has proved to the satisfaction of the Jury that Peter Kelly is the Father of the Child of the Prosecutrix as stated in the Complaint they will find for the Defendant.

3<sup>rd</sup>. That if from the appearance, conduct and testimony of the Prosecutrix, the Jury are satisfied that she is too ignorant; and imbecile in mind to have a just appreciation of truth - or that from such defect she is incapable of discriminating between right and wrong, or truth and falsehood they ought to disregard her testimony.

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4<sup>th</sup> That if the Jury believe from the Evidence, that that the Prosecuting witness does not understand the nature and obligation of an Oath they will disregard her Evidence

5<sup>th</sup> That if the Jury believe from the Evidence and from the appearance and testimony of the Prosecuting witness that she has no just appreciation of the existence of a God and of a future state of Rewards and Punishments, they will disregard her Evidence.

6<sup>th</sup> That if the Jury believe from the Evidence and from the testimony of the Complaining witness that she does not know the difference between truth and Perjury - and has no distinct idea of the meaning of the terms, they will disregard her Evidence

7<sup>th</sup> That if the Jury have any reasonable doubt whether the Defendant Peter Kelly is the Father of the Complainants Child they will find the Defendant not guilty.

The Jury found a verdict in favor of the People -

The Defendant entered a motion for a new trial and in arrest of judgment for the following reasons.

The People of the  
State of Illinois  
vs  
Peter Kelly

In the Circuit Court  
of Peoria County

Complaint for Bastardy

The Defendant enters a motion for a new trial  
in arrest of judgment in this cause for the following  
reasons

1st Because the Complaint is insufficient.

2nd Because the Verdict is against law and Evidence  
and the instructions of the Court.

3rd Because the Court has not authority to try this  
Cause at a Criminal term.

4th Because the Court misdirected the Jury in matters  
of law upon request of the People.

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

N. H. Purple, Defts atty

The Court overruled said motion and the  
Defendant then and there again excepted to the  
opinion of the court in overruling said motion

The Court then entered judgment upon the  
verdict and the Defendant then and there again

Excepted to the Judgment and Ruling of the Court and requested the Court to sign and seal this bill of Exceptions, which is done  
C. N. Powell

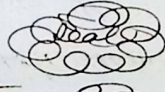
And afterwards, to wit, on the 21<sup>st</sup> day of June A. D. 1861. there was filed in the office of the Clerk of said Circuit Court, an appeal bond, in words and figures as follows, to wit:

Appeal bonds

Know all men by these presents that we Peter Kelly, and Adam Gates of Peoria in the County of Peoria and state of Illinois, are held and firmly bound to the People of the State of Illinois for the use of Ann Maria Pride in the Penal sum of Seven hundred dollars lawful money of the United States, to which payment well and truly to be made and done we do bind Ourselves our heirs Executors administrators and each and every of them jointly and severally by these presents

The condition of this obligation is this Whereas on the 7<sup>th</sup> day of June A. D. 1861, at a Circuit Court then in session the above named Peter Kelly was convicted of being the father of a bastard child begotten upon the body of the said Ann Maria Pride, and whereas the said Peter Kelly was afterwards, to wit, on the 10<sup>th</sup> day of June A. D. 1861, ordered and adjudged by the said Court to pay the yearly sum of Fifty Dollars

in quarter yearly payments for the period of seven successive years. For the support & maintenance of the said Bastard Child as by the Records and Proceedings in said Court will fully appear from which said Order and Judgment of the said Circuit Court the said Peter Kelly has prayed an appeal to the Supreme Court which has been allowed by the said Circuit Court, Now if the said Peter Kelly shall prosecute his said appeal duly and with effect, and shall pay the Judgment, Costs interests and damages aforesaid in case the Judgment of the Circuit Court shall be affirmed in said Supreme Court then this bond shall void otherwise in force.

Peter Kelly   
 Adam Yates 

State of Illinois }  
 Peoria County } S. J. Enoch J. Hoan, clerk of  
 the Circuit Court in and for said County, and State,  
 do hereby certify, that the foregoing is a true and perfect copy of the papers filed in said Court in the cause wherein Peter Kelly is Plaintiff The People of the State of Illinois are Plaintiffs, and Peter Kelly is Defendant and of the proceedings of said Court, in said cause as the same appears on file and of Record in my office  
 Given under my hand and the seal of said Circuit Court at Peoria, this 3<sup>rd</sup> day of June in the year of our Lord one thousand eight hundred and sixty one  
 Enoch J. Hoan clk.  
 J. Newton Dpty

State of Illinois  
 Pioria County

I Elisha N. Powell Judge of  
 the Circuit Court in and for said County  
 do hereby Certify that in my opinion  
 the foregoing Record contains a full and  
 true history of the proceedings on the trial  
 of the case of the People on the Complaint  
 of Ann M. Pride vs Peter Kelly tried  
 and determined in said Court on the day  
 mentioned in the foregoing Record

Witness my hand at Pioria Ill this 24th  
 day of June A.D. 1861. E. N. Powell

Judge of 16th Circuit

The People of the State  
 of Illinois upon the Complaint  
 of Ann Maria Pride  
 vs  
 Peter Kelly — Plaintiff in Error

in the Superior  
 Court Ottawa  
 A.D. June 1862

And now comes the said Peter  
 Kelly Plaintiff in Error in this suit & says that in  
 the Records and proceedings and in the rendition of the  
 Judgment aforesaid, there is manifest error in  
 this to wit.

1st Because the Court proceeded to try said case  
 at a Criminal Term

And the Court erred in instructing the Jury as requested  
 by the Prosecution

24 3d. The Court Erred in Overruling Plaintiff's Motion for a New Trial

4th The Court Erred in Entering the Judgment as Entered by the Court

5th The Court Erred in Entering Judgment on the Verdict, There being no law in force authorizing it. The law under which the offence was committed having been repealed by the act of Febury 22, 1861. (Laws 1861 p 171)

6th The Court Erred in Confining the Plaintiff's Remedy to the Complaint filed in said Cause  
For these and other manifest

errors in said Record he Prays that the Judgment may be set aside Reversed & wholly for nothing Entered June 24' 1861

M. P. R. *atty for*  
Peter Kelly *Plff in Error*

And now come the said People of the State of Illinois and say that in this record there is not any error & therefore pray that the said judgment may be in all things affirmed -

Manning & M. G. *atty for People*

5 P D  
The People  
vs.  
Peter Kelly.

Transcript from  
Circuit Court  
Illinois to  
Ill.

Abstract made  
500 pp part

Filed April 22 1862  
J. L. Leland  
clerk

fees \$6.00