

8667

No. _____

Supreme Court of Illinois

People

vs.

Henry Bond et al

71641  7

State of Illinois

Marion County

Pleas and proceedings had in the Circuit Court before the Hon Silas L. Bryan Judge of the 2^d Judicial Circuit of the State of Illinois of which Marion County forms a part in a cause heretofore pending in said Court by change of Venue from Clinton County Illinois wherein the People of the State of Illinois were Plaintiffs and ~~Henry Bond~~ and John Shinn Defendants.

Be it Remembered that on the 18th day of March 1865 the following transcript of proceedings in the above entitled cause was filed in the office of the Clerk of the Circuit Court of Marion County Illinois To wit

At a Circuit Court began and held at the Court House in the town of Carlyle County of Clinton and State of Illinois on Monday March sixth in the year of our Lord One thousand Eight hundred and sixty five. Present the Hon Silas L. Bryan Judge of the second Judicial Circuit of said State, J. Perry Johnson States Attorney, George Wundlach Sheriff and Thomas S. Smith Clerk officers holding said Court. When the following proceedings were had and orders made to wit

2
Tuesday March 7th 1865

The People

vs
Henry Bond & John Shinn
Indictment for an assault with intent
to murder" And

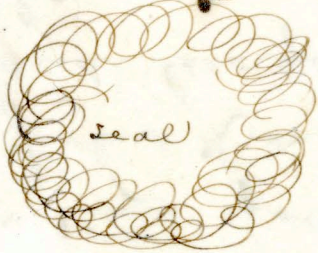
Now at this day comes the Jurors of the Grand Jury into open Court and present the bill of indictment herein marked exhibit

(A) whereupon it is ordered by the Court that the said Defendants Henry Bond and John Shinn be recognized in the sum of One thousand dollars each conditioned that they appear before this Court and answer said Indictment And afterwards to wit March 10th by consent of parties it is ordered by the Court that the venue of this Cause be changed to the County of Marion in said State and that the interpes on behalf of the said People be recognized in the penal sum of One hundred dollars each to be and appear before the Marion Circuit Court to be held at the Court House in the town of Salem in said County on the third Monday in the month of March in the Year of Our Lord One thousand eight hundred and sixty five Whereupon the said Witnesses appeared

3
in open Court and entered into the following recognizance" Be it remem-
bered that on the 10th day of March 1865 John Love, A. Clavaugh, Martin Augby and George, A. Bacon of the county of Clinton and State of Illinois came before the Circuit Court of Clinton County and each for himself acknowledged himself to owe and be indebted to the People of the State of Illinois in the sum of One hundred dollars to be made and levied off his goods and chattels, lands and tenements of each respectively to the use of the People of the State of Illinois if default shall be made in the conditions following: That if the said John Love, A. Clavaugh, Martin Augby and George, A. Bacon shall each personally be and appear for himself before the Circuit Court of the County of Marion and State of Illinois on the third Monday in the month of March A.D. 1865 to give evidence in behalf of the said People against Henry Bond and John Shinn ^{Indicted} for an assault with intent to murder in said County of Clinton and from which a change of venue has been taken to the said County of Marion and that each for himself do not depart

the said Circuit Court within and for
the County of Marion without leave
then this recognizance to be void, other-
-wise to remain in full force and effect

State of Illinois ss. J. S. Smith Clerk
Clinton County of the Circuit Court
within and for said
County do certify that the foregoing
is a true copy copy of the records of
said Court in the above entitled cause



In testimony whereof I have
hereunto set my hand and
affixed the seal of said Court
at office in Carlyle this 7th of
March A. D. 1865



J. S. Smith
Clerk

Also on same date Indictment was filed
in words and figures following to wit
State of Illinois ss. Of the March term of
Clinton County the Clinton County
Circuit Court in
the year of Our Lord 1865 The Grand Jurors
chosen, selected and sworn and for the
County of Clinton aforesaid in the name
and by the authority of the people of the
State of Illinois upon their oaths present

that Henry Bond and John Shinn late
 of the county aforesaid on the third day of
 February in the year of Our Lord One
 thousand eight hundred and sixty five at
 and in the county of Clinton aforesaid
 with hands feet and a certain pistol then
 and there in and upon one John Love
 did make an assault and him the
 said John Love did beat strangle and
 wound with an intent him the said
 John Love then and there feloniously
 with fully and of his malice aforethought
 to kill and murder contrary to the
 form of the statute in such case made
 and provided and against the peace
 and dignity of the people of the State of
 Illinois" And the Grand Jurors afore-
 - said in the name and by the au-
 - thority aforesaid ^{upon their oaths aforesaid} do further present that
 the said Henry Bond and John Shinn
 of the county aforesaid on the third day
 of February in the year of Our Lord
 One thousand eight hundred and sixty
 five at and in the county of Clinton
 aforesaid in and upon one John Love
 then and there in the peace of said people
 being with their hands and feet did
 feloniously make an assault and him

6
the said John Love then and there beat
bribe and strangle with an intent him
the said John Love then and there
feloniously with fully and of their
malice aforethought to kill and murder
contrary to the form of the statute in such
case made and provided and against
the peace and dignity of the people
of the state of Illinois

J. Perry Johnson
States Attorney

Afterwards at the March term 1865 of the ^{circuits} Marion County
Court on Tuesday the 21st day of March the following order
appears of Record in said case *Smith*

Of the March Term A.D. 1865
of the Marion Circuit Court

The People

vs

Henry Bond and

John Skinn

assault with intent

to commit murder

Change of Venue from Clinton County

And now at this day comes to wit-

Tuesday March 21st 1865 this cause being called come the Plaintiff by J. Perry Johnson States Atty and the defendants being in custody also come in proper person and by O. Melvrey and Merritt their Counsel, and the defendants waive arraignment and appear say they are not guilty as charged in the Indictment herein and defendants by their counsel enter their motion to quash the Indictment which motion is overruled by the Court, and this cause being called for trial and issue being joined let a jury come, and thereupon come the following Jury to wit: Samuel Shanafelt, William W. Pace Jesse Eddings, David Brazel Samuel Wantland, Frederick Warner, Lorenzo Leonard, Middleton Easley, William C. Hill, Isaac McClelland, Milton P. Hester and George P. Hull, twelve good and lawful men who being tried elected and sworn well and truly to try the issue joined herein and after hearing the evidence arguments of counsel and instructions of the Court, retired to consider of their verdict and afterwards brought into Court

8
the following verdict "We the jury find the
Defendants guilty and fix the term of their con-
finement in the Penitentiary at one year each
Whereupon the defendants by their counsel enter
their motion for a new trial and the Court hear-
ing argument on said motion overrules same and
enters judgment on the verdict, whereupon defen-
dants by their attorney except to the ruling of
the Court, It is therefore ordered and
adjudged by the Court that said defendants stand
convicted as charged in said Indictment and
that they be confined in the State Penitentiary
for the term of one year, one day thereof to sol-
itary confinement and the residue of said term
to hard labor.

It is further ordered and adjud-
ged by the Court that this sentence shall take
effect from and after the expiration of two
years the time for which said defendants
were convicted upon an Indictment at this
present term of Court for the crime of Robbery
And it is further ordered that the Sheriff of
Marion County Illinois carry the judgment of
this Court into execution by delivering said
Defendants Henry Bond and John Skinn to the
authorities of the State Penitentiary &c

And afterwards Towitt on the 28th day of March A.D. 1865
said Defendants by their attorneys filed their Bill of
Exceptions which is in words and figures following To-witt

State of Illinois In the Circuit Court of Merion
Marion County County March Term A.D. 1865

The People

vs

John Shinn &
Henry Bond

Indictment for assault with
intent to murder, Change of
venue from Clinton Co

Be it Remembered that on the trial of the above
cause before Judge Bryan and a jury, on behalf of
the prosecution John Loe was introduced and sworn
as a witness who testified as follows, to wit, That on
the evening of the third day of February 1865 he
went to Carlyle to procure some cakes &c for a
party, that he met Defts in Carlyle that he pur-
chased the cakes, ^{also} ~~and~~ that he got some oysters
that he drank with Defts, that he had been ac-
quainted with them since the September before,
that he wanted them to go to the party with him
that night, and at the same time they proposed
to him to go with them to a party or dance which
they said would be that night in the neighborhood
at another place. That he never had had any quarrel
with Defts, was always friendly as far as he knew
All of them had been drinking, ^{but was not drunk} and all started

out of Carlyle together to go ^{to} the party. Sometime
 between 8 & 9 o'clock at night. When we got out
 about two hundred and fifty or three hundred
 yards from the town we sat down on a log to
 rest. Bond got up and stood before me and coughed once
 or twice when John Shinn grabbed me by the throat
 and choked me. Henry Bond helped him, and threw
 me back over the log. They choked me and beat me and
 took my knife and pocket book. The pocket book had
 about \$25 in money 1 quartz stone & some cut silver
 They then left me After they had been gone about a
 half hour they came back and Shinn kicked me
 in the side (Bond told him to do it) and said dead
 men tell no tale. About one or two o'clock nitney
 went back to Carlyle made no complaint to the pro-
 tice until after daylight in the morning. Saw Bond
 have a pistol that night and they also had a knife
 They did not use either of them. Sam from Missis-
 sippi State was a sign overseer there. Have been
 in Clinton Co about a year. The quartz rock
 was worth to me about \$10.

Clabough sworn for the prosecution said: He
 knew love has known him since he came to Carlyle
 as far as he knows him is a quiet inoffensive man drinks
 some never knew him to be drunk think he is not in
 the habit of getting drunk he took him to Carlyle
 the day of the night of the assault. That he had drunk
 some but he left him in town that evening. He saw

nothing more of him until the next day. Then Love seemed to be crippled up some, but he did not remember that he saw any marks upon him. Love had some money he supposed about some \$25 when he went to town does not know what he may have paid out, or whether anything.

F. Latz: Being sworn said: I was the officer who arrested defts they were in Carlyle at McClains grocery. They made no attempt to escape, nor resistance except that Bond seemed rather impudent, said he would not go until he got his game out, they were playing cards when I went in I took them to the Court House - and searched them there, at first Bond refused to be searched and may have said I had no right to search him without a search warrant, but I am not sure about this something was said however was said there about a search warrant, did not see any marks on the throat of John Love.

This was all the evidence

And be it further remembered on the trial of this case that at the instance of the prosecution the Court gave the following instructions, to wit, 1st that if the jury believe from the evidence that Bond and Shinn are guilty of an assault with intent to murder John Love, they should find the prisoners guilty

2 And if the jury believe from the evidence that Bond & Shinn were together and acted in concert

at the time of the assault to murder was made they should find them equally guilty.

To the giving of which instructions, the prisoners by their Counsel at the time objected, which was overruled & to which judgment overruling the objections the prisoners at the time excepted

And be it further remembered that afterwards the jury having retired to consider of their verdict returned into court the following verdict, to wit "we the jury find the Defts guilty & fix the time of their confinement in the Penitentiary at one year: Whereupon the said Defts move the Court

1st for a new trial, for the reason that said verdict is contrary to law &

2 Because said verdict is contrary to & not warranted by the evidence

3 Because the 2nd instruction assumes that it is proved that an assault to murder has been established, which motion is overruled by the Court, to which judgment of the Court in overruling said motion the said Defts at the time excepted

And afterwards the Court in the same cause recorded said verdict and rendered judgment thereon in words & figures following, to wit,

(See page 7)

Whereupon Defts pray the Court to sign & seal this their Bill of exceptions & make the same

a part of the record. Which is done in open Court this 28th day of March 1865

Silas L Bryan *(Seal)*
Judge 2^d of Cir Ills

State of Illinois
Marion County *SS*

I, Henry B Moore Clerk
of the Circuit Court of said County do hereby certify the foregoing to be a true and correct transcript of the records and proceedings had in our said Circuit Court in the foregoing entitled cause as the same appears on file and of Record in my Office.

Given under my hand and official seal
at Salem this 3rd day of April A.D. 1865
H. B. Moore Clerk

State of Illinois. First Grand Jurors
Supreme Court

and now comes the 1st objection by W. H. S. O. Mulaney
thru atly, and on the foregoing record says that
the Court erred 1st In not granting a new trial
because the verdict does not find if what 2^d
objts are guilty.

2 because the verdict is insufficient in form

3 because the evidence in the case does
not warrant the verdict of guilty of armed
murder -

4. Because the 2 instructions assume the accused

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

NOVEMBER TERM, 1865.

THE PEOPLE, &c.,
vs.
HENRY BOND AND
JOHN SHINN. } Indictment for Assault with intent to Murder.

ABSTRACT.

- Page 1 Change of Venue from Clinton.
- “ 2 Indictment returned into open Court, and service charged.
- “ 3 Certificate of transcript.
- “ 3 Copy of indictment. Charges assault with intent to murder.
- “ 4 Copy of indictment concluded.
- “ 6 Motion to quash indictment. Motion overruled.
Defendants plead not guilty.
- “ 6 Jury empaneled.
- “ 7 Verdict: “We, the Jury, find defendants guilty, and fix the term of their confinement in the penitentiary at one year each.”
- “ 7 Motion for new trial. Motion overruled. Exceptions.
- Ordered, that said defendants stand convicted, as charged in the indictment, and sentenced for one year each, to commence after two years, for which each are sentenced *for Robbery*.
- “ 9 Bill of exceptions: The People, &c., introduced as a witness *John Love*, who testified: That on the evening of February 3d, 1865, he went to Carlyle to procure cakes, &c., for a party—that he met defendants at Carlyle—that he purchased the cakes, got some oysters, drank with defendants, &c. That he had been acquainted with defendants since September before—that he wanted them to go to his party [a ball] and they wanted him to go with them to another party in the neighborhood. That he never had any quarrel with defendants and was always friendly, as far as he knew. All of us had been drinking, but were not drunk, and all started out of Carlyle together, to go to the party, sometime about 8 or 9 o'clock at night. When we got out of town between 200 and 300 yards, we sat down on a log to rest. Bond got up and stood before me, and coughed once or twice—when John Shinn grabbed me by the throat and choked me. Henry Bond helped him and threw me back over the log. They choked me and beat me, and took my knife and pocket-book. The pocket-book had in it about \$25, one quartz stone, and some cut silver. They then left me about a half hour, and Shinn kicked me in the side, (Bond told him to do it,) and said “dead men tell no tales.”
- Witness went back to Carlyle about one or two o'clock—made no complaint to the Justice until after daylight in the morning. Saw Bond have a pistol that night, and they also had a knife. They did not use either of them. I am from the State of Mississippi—was a negro-overseer there. Have been in Clinton County about a year. The quartz rock was worth to me about \$10.
- A. Clabaugh* sworn: Knows Love. Have known him since he came to Carlyle. The evening of the night of this assault I left Love in town. He had been drinking some. Saw nothing more of him until the next day. Then Love seemed to be crippled up some, but do not remember that I saw any mark upon him. Love had some money, supposed \$25, when he went to town. Knows nothing of how much he may have spent, or whether anything.
- “ 11 *F. Lutz*, sworn for People, testified: Was the officer who arrested prisoners at Carlyle, at McClain's grocery. They made no effort to escape, or resist, except

Bond seemed rather impudent. Bond said he would not go until he got his game out. They were playing cards when I went in. I took them to the Court House and searched them there. At first Bond refused to be searched, and may have said I had no right to search him without a *search warrant*. I am not sure about this; something was said, however, about the search warrant.

This was all the evidence.

Page 11 The Court gave the following instructions, to-wit:

1. If the Jury believe, from the evidence, that Bond and Shinn are guilty of an assault with intent to murder John Love, they should find the defendants guilty.
- “ 12 2. And if the Jury believe, from the evidence, that Bond and Shinn were together and acted in concert *at the time of the assault to murder was made*, they should find them equally guilty.

Excepted to at the time by defendants.

- “ 13 Motion for new trial, with reasons.

Motion overruled. Exceptions, &c.

alleged

ERRORS ASSIGNED.

1. The verdict does not find of what the defendants are guilty.
2. The verdict is insufficient in form.
3. The evidence in the case does not warrant a verdict of guilty of assault to murder.
4. The second instruction assumes the assault to murder to be proved.

H. K. S. O'MELVENY,
Att'y for Pl'ff in Error.

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

NOVEMBER TERM, 1865.

HENRY BOND AND
JOHN SHINN,
vs.
THE PEOPLE, *et al.* } Error to Marion.

BRIEF OF PLAINTIFFS IN ERROR.

1. The verdict of the Jury should find the plaintiffs in error guilty of some specific crime, or, at least, that defendants were guilty as charged in indictment. A general verdict of "guilty" is insufficient.
2. Under the evidence the Jury could not find defendants below guilty of any other offense than assault with intent to do bodily harm, *or assault with intent to rob.*
3. The Jury alone should determine ^{*with intent*} under what ~~circumstances~~ the assault was made, and the second instruction of the Court, assuming the assault to murder as proved, is erroneous. Instructions should be given hypothetically, and not assume the existence of certain facts. *Hopkinson vs. People*, 18 Ill. 266; *Sherman vs. Dutch*, 16 Ill. 286. Instructions should be so drawn as to state the law upon a supposed state of facts to be found by the Jury, and not assume the facts as determined. *Eaves vs. Blackhart*, 12 Ill. 195; *Wall vs. Goodenough*, 16 Ill. 415.

H. K. S. O'MELVENY,

Att'y for Pl'ff in Error.

Supreme Court of the State of Illinois

FIRST GRAND DIVISION

NOVEMBER TERM 1865

THE PEOPLE vs
JOHN SHIM,
HENRY BOND and
Editor to Jurors

BRIEF OF DEFENDERS IN ERROR

The verdict of the jury should find the plaintiffs in error guilty of some specific crime of which they are not indicted.

Filed Nov. 7. 1865
At Johnston City

³⁴⁴
Bond & Shim
vs.
The People &c.
Abstract & Brief

8667

H. K. S. O. REEVES, JR.

NEW YORK: 1865.

McBride

Mr. Justice

delivered the opinion of the Court:
 The objection to the records
 instruction given for the people is well
 taken. It is this: If the jury believe
 from the evidence that Bond and Skina
 were together and acted in concert, at
 the time of the assault to murder was
 made, they should find them equally
 guilty.

The objection is obvious. By this
 instruction the jury are plainly told
 that the defendants made an assault to
 murder. No other ~~more~~ meaning can be
 given to the language used. It amounts
 to a finding by the Court of the very fact
 the jury were sworn to try. The intent
 with which the assault was made, if one
 was made, was for the jury to determine.
 It might not have been to do murder.
 Instructions should be given, as this
 Court say in Hopkinson or The Peoples
 18 M. 264, and in Shorn or Butch
 16' it. 288, and in other cases, hypotheti-
 cally and be so drawn as to state the
 law upon a supposed state of facts
 to be found by the jury and not presume
 the facts as proved. Emery or Wheat
 12 it. 195; Walt or Goodenough 16 it.
 415

Upon the other point made, that the verdict is not specific, that it does not find the defendant guilty of any offense we have to say that in the case of the ~~prosecutor~~ ^{v. The People,} Archie, ~~indicted~~ 37 Ill. 489, ~~where the indictment~~ it was held that a verdict was sufficient that it found overtly, the party guilty of the offense charged.

For the error in giving the second instruction, the judgment is reversed and the cause remanded.

Judgment reversed.

34 — 14

Henry Bond
and John Shinn

—

The people

—

opinion by
Messrs.

8667

OK 1865

Nov 1, 1865

C

O

P

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

NOVEMBER TERM, 1865.

THE PEOPLE, &c.,
vs.
HENRY BOND AND
JOHN SHINN. } Indictment for Assault with intent to Murder.

ABSTRACT.

- Page 1 Change of Venue from Clinton.
- “ 2 Indictment returned into open Court, and service charged.
- “ 3 Certificate of transcript.
- “ 3 Copy of indictment. Charges assault with intent to murder.
- “ 4 Copy of indictment concluded.
- “ 6 Motion to quash indictment. Motion overruled.
Defendants plead not guilty.
- “ 6 Jury empaneled.
- “ 7 Verdict: “We, the Jury, find defendants guilty, and fix the term of their confinement in the penitentiary at one year each.”
- “ 7 Motion for new trial. Motion overruled. Exceptions.
Ordered, that said defendants stand convicted, as charged in the indictment, and sentenced for one year each, to commence after two years, for which each are sentenced *for Robbery*.
- “ 9 Bill of exceptions: The People, &c., introduced as a witness *John Love*, who testified: That on the evening of February 3d, 1865, he went to Carlyle to procure cakes, &c., for a party—that he met defendants at Carlyle—that he purchased the cakes, got some oysters, drank with defendants, &c. That he had been acquainted with defendants since September before—that he wanted them to go to his party [a ball] and they wanted him to go with them to another party in the neighborhood. That he never had any quarrel with defendants and was always friendly, as far as he knew. All of us had been drinking, but were not drunk, and all started out of Carlyle together, to go to the party, sometime about 8 or 9 o'clock at night. When we got out of town between 200 and 300 yards, we sat down on a log to rest. Bond got up and stood before me, and coughed once or twice—when John Shinn grabbed me by the throat and choked me. Henry Bond helped him and threw me back over the log. They choked me and beat me, and took my knife and pocket-book. The pocket-book had in it about \$25, one quartz stone, and some cut silver. They then left me about a half-hour, and Shinn kicked me in the side, (Bond told him to do it,) and said “dead men tell no tales.”
Witness went back to Carlyle about one or two o'clock—made no complaint to the Justice until after daylight in the morning. Saw Bond have a pistol that night, and they also had a knife. They did not use either of them. I am from the State of Mississippi—was a negro-overseer there. Have been in Clinton County about a year. The quartz rock was worth to me about \$10.
- “ 11 *A. Clabaugh* sworn: Knows Love. Have known him since he came to Carlyle. The evening of the night of this assault I left Love in town. He had been drinking some. Saw nothing more of him until the next day. Then Love seemed to be crippled up some, but do not remember that I saw any mark upon him. Love had some money, supposed \$25, when he went to town. Knows nothing of how much he may have spent, or whether anything.
- F. Lutz*, sworn for People, testified: Was the officer who arrested prisoners at Carlyle, at McClain's grocery. They made no effort to escape, or resist, except

Bond seemed rather impudent. Bond said he would not go until he got his game out. They were playing cards when I went in. I took them to the Court House and searched them there. At first Bond refused to be searched, and may have said I had no right to search him without a *search warrant*. I am not sure about this; something was said, however, about the search warrant.

This was all the evidence.

Page 11 The Court gave the following instructions, to-wit:

1. If the Jury believe, from the evidence, that Bond and Shinn are guilty of an assault with intent to murder John Love, they should find the defendants guilty.

“ 12 2. And if the Jury believe, from the evidence, that Bond and Shinn were together and acted in concert *at the time of the assault to murder was made*, they should find them equally guilty.

Excepted to at the time by defendants.

“ 13 Motion for new trial, with reasons.

Motion overruled. Exceptions, &c.

ERRORS ASSIGNED.

1. The verdict does not find of what the defendants are guilty.
2. The verdict is insufficient in form.
3. The evidence in the case does not warrant a verdict of guilty of assault to murder.
4. The second instruction assumes the assault to murder to be proved.

H. K. S. O'MELVENY,

Att'y for P'ff in Error.

Supreme Court of the State of Illinois.

FIRST GRAND DIVISION.

NOVEMBER TERM, 1865.

HENRY BOND AND
JOHN SHINN,
vs.
THE PEOPLE, *et al.* } Error to Marion.

BRIEF OF PLAINTIFFS IN ERROR.

1. The verdict of the Jury should find the plaintiffs in error guilty of some specific crime, or, at least, that defendants were guilty as charged in indictment. A general verdict of "guilty" is insufficient.
2. Under the evidence the Jury could not find defendants below guilty of any other offense than assault with intent to do bodily harm, *or assault with intent to rob.*
3. The Jury alone should determine ^{by} ~~under~~ ^{what} ~~circumstances~~ ^{which} the assault was made, and the second instruction of the Court, assuming the assault to murder as proved, is erroneous. Instructions should be given hypothetically, and not assume the existence of certain facts. *Hopkinson vs. People*, 18 Ill. 266; *Sherman vs. Dutch*, 16 Ill. 286. Instructions should be so drawn as to state the law upon a supposed state of facts to be found by the Jury, and not assume the facts as determined. *Eaves vs. Blackhart*, 12 Ill. 195; *Wall vs. Goodenough*, 16 Ill. 415.

H. K. S. O'MELVENY,

Att'y for Pl'ff in Error.

AM. J. for P. V. in Error.

H. K. S. O'MELVENY,

- 1. determined. *Evans vs. Blackford*, 13 Ill. 195; *Wells vs. Goodenough*, 14 Ill. 412. a supposed state of facts to be found by the jury, and not assume the facts as Dutch, 18 Ill. 288. Instructions should be so drawn as to state the law upon the existence of certain facts. *Hopkinson vs. People*, 12 Ill. 288; *Spelman vs. People*, is erroneous. Instructions should be given hypothetically, and not assume made, and the second instruction of the Court, assuming the assault to murder as
- 2. The jury alone should determine whether what circumstances the assault was offense than assault with intent to do bodily harm, or assault with intent to rob.
- 3. Under the evidence the jury could not find defendants below guilty of any other

34
Bond & Shinn

The People vs.

Abstract of Brief

BRIEF OF PLAINTIFFS IN ERROR.

8667

NOVEMBER TERM, 1882.

FIRST GRAVIND DIVISION.

Supreme Court of the State of Illinois.

Richard

The People &c

Henry Bond &

John Shinn

Indictment for assault with intent
to murder.

Charge of Verdict from Cloture

- 2. Indictment returned into open court, & venire charged.
- p 3. Assignments of transcript.
- p 3. Copy of indictment. Charge assault with intent to murder
- p 4. Copy of indictment concluded.
- p 6. Motion to quash indictment, was overruled.
Defendant pleaded not guilty.
- Defendant imprisoned.
- p 7. Verdict "The jury find defendant guilty, & for that the
"term of their confinement in the penitentiary shall be
"one year each"
- p 7. Motion for new trial, motion overruled. Exception,
ordered that defendant stand convicted as charged in
the indictment, & sentenced for one year each,
to commence after 2 years, for which each
was sentenced for robbery.

p 8. Bill of exceptions: The People advanced as
a witness John Soar - who testified.

That ^{on evening of} ~~on~~ Feb 3, 1865, he went to college to
~~procure~~ ^{procure} cakes for a party - that he met Dyer at college
 - that he purchased the cakes, got some oysters,
 drank with Dyer, that he had been acquainted
 with Dyer since before. That he wanted them
 to go to his party, ^[a bill] & they wanted him to go with
 them to an other party, in the neighborhood. That
 he never had any quarrel with Dyer & was always
 friendly or for some months. All of us had been
 drinking, but ~~was~~ not drunk.

and all started out of early a together to go to the
party sometime about 8 or 9 o'clock at night.
When we got out of town between 200 &
300 yards we sat down on a log to rest.

Bond stood up, and stood before me and
coughed once or twice. When John Shain grabbed
me by the throat and choked me. Henry Bond
~~helped~~ ^{helped} them and threw me back on the log.
They choked me and beat me and took my
knife and pocket book.

The pocket book had in it about \$25, 1 quart stone
& some cut silver. They then left me about
a half hour, and then kicked me in the
side (Bond told him to do it), and said dead
men tell no tales.

We then went back to early about one or two
o'clock. made no complaint to the
justice until after daylight in the morning.
- Saw Bond have a pistol that night
and they also had a knife, they did not
use either of them. I am from the State of
Mississippi, was a negro overseer there.
Have been in Clinton Co. about a year. The
quartz rock was worth to me abt \$10.
A Clabangh sworn:

Know Love, have known
him since he came to early, the ~~same~~ evening
of the night of this account I left Love in town he
had been drinking some. Saw nothing
more of him until the next day. This Love
seemed to be crippled up some, but ^{do} ~~do~~ not
remember that he saw any marks upon him.

Love had some money, supposed \$25 when
he went to town, know nothing of how much
he may have spent or whether any thing.

The Jury, sworn for People, testified: That the
officer who arrested prisoners, at Colgate at
McClain's grocery. They made no effort to
escape, or resist, except Bond seemed
rather impudant. Bond & She want that go
until he get his game out. They were seized
early when I went in. I took them to
the Court house and searched them there
At first Bond refused to be searched &
may have said I had no right to search
him without a search warrant. I am
not sure about this something was said
however about the search warrant.
This was all the evidence -

p. 11.

The Court gave the following instructions to the

1st If the jury believe from the evidence that
Bond and Shinn are guilty of an assault
with intent to murder John Low, they should
find the Depts guilty.

2. And if the jury believe from the evidence
that Bond and Shinn were together &
acted in concert at the time of
the assault to murder John Low
They should find them equally guilty
Excepted to at the time by Depts.

12. *Verdict, (not uniform)*

*No for new trial with reasons
No awarded, Exceptions, &c*

13. *Atty. Gen. O. Wallace*

Atty. Gen. for jurisdiction

Errors assigned:

Abstract

- 1) The verdict does not find of what the defendants are guilty.
- 2) The verdict is insufficient in form.
- 3) The evidence in the case does not warrant a verdict of guilty of assault to murder.
- 4) The ~~two~~ second instruction assumes the assault to murder to be proved.

H. K. S. O'Melroy,
Atty for P.P.P. in Error

Bond & Shinn

By

People

Com. to Martin

Opinion - Bond

Shinn & Company

pepp

of the firm no Rep

Nov. 7, 1865-

Reported

1865-