

No. 8861

Supreme Court of Illinois

Christopher H. Preisker

vs.

People

71641  7

Abstract of Record.

Christopher H. Prester *plft* in error
against
The People in Error. } Error to
} Monroe County.

Page 1+2

" 1 In indictment, 1st Count for Rape,
" 2 2^d Count, assault, with intent to commit Rape,

Page 1+2 Indictment Second Count in these words:

And the grand jurors aforesaid in the name & by the authority aforesaid upon their oaths aforesaid do further present that the said Christopher H. Prester of the County aforesaid on the 30th day of July in the year of our Lord one thousand eight hundred and sixty four, at & in the County of Monroe aforesaid with force and arms in & upon the person of Christina Prester then & there being did then & there make an assault with an intent of him the said Christopher Prester her the said Christina Prester unlawfully feloniously and against her will to ravish & carnally know, contrary to the form of the Statute made & provided & against the peace and dignity of the People of the State of Illinois.

Page 3. Writ of Capias.
+ 4

Page 5 } Motion to quash indictment first and second
and Counts and overruled.

Page 6 }

Page 6 Trial-

Page 7 Verdict of Jury of guilty, motion for new trial and overruled and sentence & judgment of Conviction Entered.

Page 8. Bill of Exceptions.

The Evidence for the People.

Christina Preister sworn &

says, defendant often took hold of me & troubled me, the last time before my confinement; he troubled me hard; my husband was not at home; the defendant came in the evening; that night he teased me so much that I had pain in my breast; took hold of me, threw me on the bed & wanted to get rid of his heat; he teased me so much I got out of breath; he wanted to force me, but did not succeed. It was against my will that he threw me on the bed; at my husband's house, on the 31st day of July A.D. 1864. I know of nothing more.

Page 9

Cross examined by defendant; The old man (meaning Preister) did not then live at our house at that time, except during the eight days he was sick in our house; don't remember how long it was after the old man removed permanently from our house; he troubled me on previous visits, but not so hard; laid his hands on me before, while I was stronger. I could always hinder him. When I would tell him I would inform my husband,

he would say that did not make any difference; he often used words of persuasion, but on the last occasion wanted to have his will by force; he did not strike, nor kick nor tear my clothing off; he fell crosswise over me; I tried to defend myself. I was sitting at the table sewing; he caught me & dragged me to the bed, two or three steps. It was about as far to our next neighbor, Mr. Kissel as one hundred and twenty five feet. I did not scream nor hallow, because it would not help me any. The Kissels were asleep. I told my husband on previous occasions, but he said nothing to anybody about it, because he was my husband's father. The last time I told my husband the next day. Don't remember when I complained against the defendant before a J.P. The last affair occurred about eleven or twelve o'clock at night. The old man stopped, but commenced again in the morning; he staid all night. I was too bashfull to tell my neighbors, and could not leave my children. Both myself and the old man were expecting my husband home every moment. I never talked ^{with} ~~at~~ ~~the~~ ~~man~~ ~~Ex. J.P.~~ nor told him that I would not have brought the charge of the defendant had not taken away his property. I neither made such a statement two weeks after 3rd day of July, nor in a conversation at my house three months after that date; had no conversation with him at all

Page 10

Subsequent to the affair, she said, the old man wanted to know when they were going to sue, for if they were not going to sue, he was; he wanted his good name.

Page 11

August Preister sworn and testified: on third August, 1864, I asked the defendant what he did on the 31st of July? His answer was, "What did I do?" Witness rejoined; "You know well enough". The old man got very angry. I hear a conversation between my wife & my father. My wife said to my father; "I have often told you I would not be untrue to my husband". The old man replied; "That was not to be untrue to her husband". He further said; If his son & daughter in-law did not desist from their charge, he would take his property away.

Cross Examined. The only conversation I had with my father was in the field; my wife was about twenty five steps off; I asked him, "what he had done with my wife?" Defendant answered in a loud tone, "What did I do?" I told him, "he knew." He said; "I will go and see her about it". He went to where my wife was, and I started my horses plowing in a trot to get round near them; I heard the old man say to my wife: "It did not hurt you". "I used your person". My wife said to him. "I often told you; I would not be untrue to my husband". The old man replied; That was

Page 12. not to be untrue to him.

I did not go to them; there was a split between them and me, and because my horse would run away. Complaint was made for Rape against defendant two weeks after 31st of July. The old man replevied ~~his~~ property on the same day the complaint was made.

The Prosecution rested their Case. Defendant introduced ^{Abram} Clatter, sworn & testified; August Preister wife and her brother came to my house to enter Complaint for Rape. They said the old man had taken away his property & they were going to make him pay for it. They also said that if Preister had not taken away his property, they could not sue. This was about 14th of August A.D. 1864.

Here the defendant rested his case. This was all the Evidence on either side.

Page 13. Among the instructions given was the following in behalf of the People. Number three (3)

That if the Jury believe from the Evidence that the defendant is not guilty, as charged in the first Count of the indictment, but believe him guilty of an attempt as charged in the second Count, your verdict should be, "guilty as charged in the second Count of the indictment" and for the term of his confinement in the penitentiary not less than one nor more than fourteen years, to the giving of which the defendant at the time Excepted.

Page 14. verdict of Guilty.

Motion for retrial

" 15. Motion overruled.

" Certificate of Clerk of record.

" Certificate of Judge of Correctness of
Record and Assignment of Errors.

Errors

1 The verdict was against the
law,

2 Against the evidence

3 The 2^d Count of the indictment

ought to have been quashed

HC

DeWitt & Barren,

Abstract

in case of
Parker
vs
The People

Brief.

I

The 2nd Count of Indictment is bad we think, & the writ to quash ought to have been sustained.

It fails to charge that the intent was, forcibly to have the unlawful intercourse. Rape must be forcibly. The words employed in this 2nd Count ~~is not that~~ fail to charge that the intent of deft was to succeed by force, unless that is embraced in the word "ravished". See Sec 1053. et seq Wharton on Law, & Crim Code R S Sec 48

III

The evidence in the Case fairly implies we submit fails to prove the Charge,

1st The Prosecuting witness is impeached by Squire Kram,

2nd Her whole evidence totally fails to prove that the deft sought or ever intended to use force to compel her to submit, or ever had any other purpose toward her than to tease or persuade,

The fact that she says she could always handle him, that he hurt or wounded her in no way, that she made no outcry though her neighbors usually lived but 40 yards distant, that she has pretended ravishes, slept under the

IX.

The instruction is for the attempt
to make the "actual" this was wrong
we think.

But we depend on the evidence
so that we say it does not prove
the charge.

O'Leary & Barrow

III

11

same roof, expecting very moment the
return of her husband, her statement
that if the old man had not taken
away his property from their side
and would have been commenced
and such pregnant facts, against the
truth of the charge, are we think not
overcome upon examination of the whole
proof.

II III

The 3^d Instruction is rep and uncertain
It speaks of "attempt" not intent
see Wharton Am Crim law,
sect 1055 et seq.

H. H. Parrunt
H. K. S. O. Melaney
attys for the
Crown

Abstract of
Brief
of
Pfeiffer case

Filed, December 2^d 1867
R. H. Wilbur
Clerk

U. S. District Court
District of Columbia
at Washington

1
It is remembered that at
the Special November Term 1866
of the Monroe County Circuit
Court, on the 28th day of November
1866, the following Bill of Indictment
was filed, to-wit:

State of Illinois }
Monroe County } ^{ss} Of the November Special
term of the Monroe County Circuit
Court, in the year of our Lord 1866.

The Grand Juror chosen, selected and
sworn, in and for the County
of Monroe aforesaid, in the name
and by the authority of the people
of the State of Illinois, upon
their oaths present that Christopher A
Priester late of the county aforesaid,
on the Thirtieth day of July in the
year of our Lord One Thousand Eight
Hundred and Sixty Four, at and in the
county of Monroe aforesaid, with
force and arms in and upon the
person of Christina Priester then and
there in the peace of said people being
unlawfully wilfully and feloniously did
then and there make an Assault and
her the said Christina Priester did
unlawfully wilfully feloniously and against
her will ravish and carnally know
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.

[884-7]

2
And the Grand Jurors, aforesaid, in
the name and by the authority
aforesaid, upon their oaths aforesaid,
do further present that the said
Christopher H Priester of the county
aforesaid, on the Thirtieth day
of July in the year of our Lord
One Thousand Eight Hundred
and Sixty Four, at and in the
county of Monroe aforesaid,
with force and arms in and upon
the person of Christina Priester
then and there being, did then and
there make an assault with an
intent of him the said Christopher
Priester her the said Christina Priester
unlawfully feloniously and
against her will to ravish
and carnally know 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
State attorney.

Endorsed, the People vs Christopher H Priester, Indictment for Rape
A True Bill, J B Bradshaw foreman.

And on the third day of said
Term of Court the following
order was made and entered of
Record, to-wit:

3-

The People }
 Christopher A Priester }
 Indictment for Rape
 Ordered by the court that
 capias issue against defendant
 and that he be admitted to bail
 in \$1000. and that this case stand
 continued.

And afterwards to wit, on the 20th day
 of December 1866, the following
 writ was issued from said Court to wit:

State of Illinois }
 Monroe County }
 ss

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

We command you that you
 take Christopher A Priester if he
 shall be found in your county
 and him safely keep, so that you
 have his body before the
 Circuit Court of said County of
 Monroe, on the first day of the
 next Term thereof, to be holden at
 the Courthouse in Waterloo on the
 first Monday of May next to
 answer to the People of the State
 of Illinois for and concerning
 the crime of Rape: with
 which the said Christopher A Priester

stands charged, in our ^{said} Court as
 by a certain Bill of Indictment
 preferred against him by the
 Grand Jury of said County, in
 that behalf appears; and have
 you then and there this writ, with
 your return according to Law.

Seal Witness, William Erd,
 clerk of said Circuit Court, the
 seal thereof hereto affixed at the
 office in Waterloo, this 20th day
 of December A.D. 1866.

Wm Erd

Circuit Clerk of Monroe County

(Endorsement) Ordered that the Defendant be admitted to
 bail in \$1000. Wm Erd clk.

which was returned with the
 following endorsement, to wit:

Served the within writ by
 reading the same to the
 within named defendant and by
 taking bond as above directed. this the
 20th day of December A.D. 1866.

J W Drury
 Sheriff Monroe County

5-

And afterwards at the May Term 1867 on
the 7th day of May 1867 the
following motion to quash
the Indictment was filed, to wit:

State of Illinois } In the Circuit Court
Monroe County } of Monroe County

The People of the
State of Illinois
vs
Christopher Priester } Indictment for Rape
and Assault to Rape

And now this day comes the said Defendant,
and moves the Court to Quash the first,
and second Counts of said Indictment,
because 1st said Indictment does not
in the first count of said Indictment,
specify the time when the crime was
consummated,

2. The first Count does not charge
that said crime was done forcibly.

3. The second Count does not charge
the offence with sufficient legal
precision.

4. said 2nd Count does not charge
the assault to be with intent forcibly
to commit the offence.

5. said Indictment is otherwise informal and insufficient in Law.

A. S. O'Melveny
Atty for Defendant

And on the first day of said (May) Term of Court the following order was made and entered of Record to wit,

The People	}	Indictment for Rape
vs		Now comes the defendant Christopher H. Priester by Melvany his Attorney and enters a motion to quash the Indictment, which motion is refused by the Court, and this cause continued at the instance of the people

And afterwards at the Special November Term 1867. of said Court, the following Judgment was rendered and entered of Record, to wit;

The People	}	Indictment for Rape
vs		Christopher H. Priester

November 26th 1867.

Now on the first Tuesday comes J. Perry Johnson States Attorney, also the Defendant in person and by his attorneys, Melvany and Parnum, who making formal arrangements, copy of Indictment, list of Jurors and witnesses, enters the plea of not guilty, and the parties being ready for trial, a Jury is called as follows: Nathaniel Nixon, Wm Nagel, Christian Imhoff

7.

George Divers, Louis Arns, Geo Loreng,
 Martin Friedrich, Edward W Howland,
 Jacob Mays, Frank Heer, Thomas
 Byrnes and Andy Cornell; twelve lawful
 men, who after being sworn and heard
 the testimony, retired, after deliberation
 returned into Court with their verdict,
 as follows,

We the Jury find the Defendant guilty
 as charged in the second count of said
 Indictment, and fix the term of his
 confinement in the penitentiary, at one year.

Whereupon the Defendant by his attorneys
 made a motion for a new trial, which
 is denied by the Court. Whereupon the
 Court pronounces sentence as follows, that
 let the said Christopher H Priester be taken to
 the penitentiary in the State of Illinois,
 and there be imprisoned for said term
 of one year, one day to solitary
 confinement, and the residue to hard labor,
 and that the Sheriff of said Monroe County
 execute this sentence.

And on the 27th day of November AD 1861, the
 following Bill of exceptions was filed, to-wit:

8

State of Illinois }
Monroe County }

Circuit Court
November Special
Term AD 1867.

The People }
Christopher H Priester } ^{vs} Indictment for Rape

Do it remembers that upon the trial of the above entitled cause at the November Special Term of the Monroe Circuit Court, in the year 1867, Christina Priester, a witness produced upon the part of the Prosecution and duly sworn, testified as follows:

Christopher H Priester often took hold of me and troubled me. The last time, four weeks before my confinement, he troubled me hard. My husband was not at home. Priester, the defendant, came in the evening. That night he teased me so much, that I had pains in my breast; took hold of me; threw me on the bed, and wanted to get rid of his heat. He teased me so much that I got out of breath. He wanted to force me but did not succeed. It was against my will that he threw me on the bed. I know of nothing further. It was at my husband's house, on the 31st July 1864.

Cross Examination.

4
The old man did not live at our house at that time, ^{except} ~~but~~ ~~came~~ ~~and~~ ~~met~~ during the ~~whole~~ eight days he was sick; sick in our house. Do not remember how long it was after the old man removed permanently from our house. He troubled me on previous visits, but not so hard. Laid his hands on me before. While I was stronger. I could always hinder him. When I would tell him I would inform my husband, he would say, that did not make any difference. He often used words of persecution; but not on the last occasion; wanted to have his will by force. Did not strike or kick me nor tear my clothes off; but hurt me; fell cross-wise over me. I tried to defend myself. I was sitting at the table sewing; he caught me and dragged me to the bed, two or three steps. It was about as far to our next neighbor Mr Kissel's, as it is from the Court House here, to the Street about 125 feet. I did not scream or halloo, because it would not help me any. The Kissels were asleep. I did tell my husband on previous occasions, but he said nothing to anybody about it, because he was my husband's father. The last time, I told my husband the next day. Do not remember when I informed against defendant.

before a justice of the peace.

It was eleven or twelve o'clock at night when the last affair occurred. The old man stopped; but commenced again in the morning. He staid all night. I was too bashful to tell my neighbors and could not leave my children. Both myself and the old man were expecting my husband home every moment.

I never talked with Matthias Kramm J. P.; nor told him that I would not have brought the charge if Priester, the defendant, had not taken away his property; I neither made such a statement to him two weeks after the 31st of July nor in a conversation at my house three months after that date, had no conversation with him at all.

In answer to a question by the prosecuting attorney, as to what the old man said to her in a conversation subsequent to the alleged offence: witness stated. The old man said he wanted to know when they were going to sue, for if they were not going to sue, he was; he wanted his good name again.

August Priester, on behalf of the prosecution, swore, -

be untrue to him" I (the witness) did not go to them, could not go over a sink hole that lay between me and them, because my horses would run away. It was exactly fourteen days after July 31" (the day of the alleged offence), that complaint was made. A writ of replevin had been sued out that day, by the old man for his property, and on the same day the complaint was made.

Here the prosecution rested the case.

Matthias Kramm, witness for defendant, swore, August 26 Priester, his wife, and her brother came to my house to make complaint for rape. They said the old man had taken away his property and they were going to pay him for it. They also said that if Priester had not taken away his property, they would not sue. This was about the 14th of August 1864. Here defendant rested. The foregoing was all the evidence in the case on either side. The following instructions were then asked on the part of the prosecution.

The Court instructs the Jury that if from the evidence they believe that the defendant attempted to commit a Rape on the person of Christena Priester forcibly and against her will, they should find defendant guilty, although they may believe the Prosecuting witness offered to compromise
 given

2

If the Jury from the evidence believe that the defendant committed a Rape on the person of Christina Prieker, they should find defendant guilty, as charged in the first count of the Indictment and fix the term of confinement in the Penitentiary, at not less than one year and may extend to the term of his natural life.
given

3

If the Jury from the evidence believe that the defendant is not guilty as charged in first count of the Indictment, but believe him guilty of an attempt as charged in second count, your verdict should be guilty as charged in second count of Indictment and fix the term of his confinement in Penitentiary at not less than one, nor more than fourteen years.
given

to which the defendant at the time objected; and said instructions being given by the Court, the defendant at the time excepted to their being so given. The defendant then asked and the Court gave the following instructions,

That you have a right to consider in finding a verdict in this case, the proof that the old man was sick Eight days previous, as well as his age, and relation to the party; and unless you believe that the Prisoner used such force, and violence against the person of the Prosecuting witness, Christina, as was calculated to overcome resistance on her part
given

Before you can find the defendant guilty,
you must be satisfied beyond a reasonable
doubt, that the old man intended to violate
the person of the witness, Christina; by
force and against her will. given

The case was then submitted to the jury,
who returned the following verdict.

That the
Jury find the Defendant guilty as charged
in the second count of said indictment,
and fix the term of his confinement in
the Penitentiary, at One year.

Whereupon
the Court rendered judgment as follows

That he the said Christopher H. Priester, be
taken to the Penitentiary in the State of Illinois
and there be imprisoned for said term of
One year, one day to be solitary confinement
and the residue to hard labor, and
that the Sheriff of said Monroe County
execute this sentence.

The following written motion for a new trial
was then made by defendant.

The defendant comes and moves the
Court for a new trial,
1st because the Verdict of the Jury
is against the evidence.

15,

2nd Because it is against the Law

3rd It is against the instructions of the Court

4th Because the instructions of the People severally, is not the Law

Baronum & Milburny for Deft


and the said motion being overruled by the Court, the Defendants at the time excepted.

Silas L' Bryan, Judge ^{Real}

2nd Jus Dic

State of Illinois } I, the undersigned Clerk of the Circuit Court
 Monroe County } within and for said County, in the said State
 hereby certify that the foregoing Record
 contains a true & correct copy of the Bill of
 Indictment with the endorsement thereon; of the copies
 and the endorsement on the same ^{of the motion to quash the indictment;} of the orders of Court,
 and final Judgment - of the motion for a new trial
 of the Bill of exceptions; as the same appear of
 Record, and on file in my Office, in the
 foregoing entitled cause

In testimony whereof, I, Wm Ord, Clerk
 of said Court, have hereunto set my hand and affixed
 the Seal of said Court @ Waterloo, this 28th day of
 November 1867.

Wm Ord 

State of Illinois J. Silas & Bryan
 Monroe County } Judge of the Circuit
 Court of said County, do hereby certify
 that in my opinion the foregoing
 Record contains a true and full
 history of the proceedings on the
 trial of the within named case.
 Silas & Bryan Judge
 J. M. C. C.

And do hereby certify that on the foregoing
 record, says there are manifest errors, and by
 force of the Statute &c. says and accepts
 for error.

- 1st The Court erred in giving improper
 instructions, severally.
2. The Court erred in not quashing
 the second Count of the indictment.
3. The Court erred in not granting
 a new trial, because the verdict of
 the jury was contrary to law &
 the verdict was contrary to
 the evidence, wherefore
 &c. Barron &
 & Meloy for
 plaintiff

Charles H. Cramer
 Plaintiff in error
 vs
 The People
 Defendants in error
 Record

Filed 2nd December 1867
 R. M. Hancock
 clk

18

State of Illinois J. Having inspected the foregoing
 record and considered the errors specified ^{therein} and
 of opinion there is reasonable cause for allowing a
 writ of error, and the clerk will make the same a supersedeas
 and if the plaintiff is now being in custody, the Sheriff will admit him to
 bail in ^{the sum of} three thousand dollars
 with William Boden
 back and Charles
 Hen, his sureties, con-
 ditioned according
 to Sect. 199 of the
 Criminal Code
 1867 c
 Sidney Green Chief
 Justice Sup. Court.

* bail and discharge
 him from custody
 on his entering into a
 recognizance to the
 people of the State for
 the sum of three
 thousand dollars
 with William Boden
 back and Charles
 Hen, his sureties, con-
 ditioned according
 to Sect. 199 of the
 Criminal Code

in-law of the prosecuting attorney,
Taking into consideration the
relation existing between the
parties, it is not surprising
that the prosecuting witness &
her husband (the son of the
Plaintiff in error) were very slow
to believe that the old man
really intended to have sexual
intercourse with the wife of
his son forcibly, and against
her will.

The evidence shows that on
several occasions he took gross
liberties with her person, and
endeavored to induce her to
submit to his designs. That she
put him off from time to time, telling
that he would desist, - but that
at last when she was pregnant
and very near the time of delivery
the old man threw her upon the
bed and endeavored to have sexual
intercourse with her - that he fell
upon her and attempted to force
her. That before that time he
had endeavored to persuade
but on that occasion used
force.

Hundreds of cases, might be cited
where with evidence not half as
satisfactory, as in this case, Courts
have refused to interfere with
the verdict of the jury.

The Plaintiff's error is shown
to be as low, if not lower, than
ordinary error, and unless
the evidence of the Prosecuting
Wharf is entirely disregarded the
Verdict should stand,

As to the third instruction, it
appears to embody the law correctly,
and it is not easy to see how
it could be improved.

Wm. H. Ingersoll
Att. Genl.

No 15 — 42

The People
at
Preston
Part of the
Next Error

June 20th June 1858.

W. W. W. W. W.
etc

State of Illinois, ss.

Office of the Clerk of the Supreme Court
1st Grand Division.

Matthias Kraemer, being duly sworn upon his oath says that he considers
Wm. Bodinbach and Char. Herr, worth over
all liabilities at least three thousand
dollars (\$3000.00) that part consisting of
real estate lying in the County of Monroe
and State of Illinois, and together is worth
at least five thousand dollars and that
this affiant is a resident of Monroe County
Illinois. Matthias Kraemer

Subscribed and sworn to
before me this 2nd day
of December 1867

R. A. Weir

Clerk Sup. Court.

C. H. Pischer
as

The people
→

affidavit of the
Kramer as to holding
of minutes - to be
filed -

Filed Dec. 2nd 1887

W. H. Andrews
Clerk

Make affidavit of the ability of Bodinbach and
Hew to pay \$3,000-

* J. Bodinbach	4000.00
* Ches Hew,	50,000.00
M. Kram	3000.00
Jas A Kennedy	3000.00
over all debts	
Christopher H Parker	6000.00

The forgoing are offered as security,
Mr. Kram, knows the parties & will
make oath to the facts, in regard
to their wealth, I know them
to be ample security, so far as the
forgoing amount, covered same,
such.

A. K. & O. Meloy

~~Pricker~~
~~The People~~

~~Lawrence J.~~

This was an indictment the first count of which charged a rape, and the second an attempt with intent to commit a rape. There was no proof under the first count and that under the second was not very satisfactory. The court gave the following instruction for the people to which the defendant excepted.

"That if the jury believe from the evidence that the defendant is not guilty, as charged in the first count of the indictment, but believe him guilty of an attempt, as charged in the second count, your verdict should be, 'guilty as charged in the second count of the indictment, and fix the term of his confinement in the penitentiary not less than one nor more than fourteen years,' to the giving of which the defendant at the time excepted."

The jury found a verdict of guilty. This and the plaintiff in error now assigns the giving of this instruction as error. It was clearly so. It required the jury to find the defendant guilty, under the second count, ~~if~~ if they believed him guilty of an

"attempt" as charged in that
count. But that count does
not charge the defendant with
an attempt to do any thing, but
with the actual commission of an
offense, having in view a certain
specific object as the motive
for the offense. The language
of the instruction is altogether
too vague and may well have
misled the jury. The judgment
is reversed and the case remanded.

Reversed & remanded.

Preisku ⁴²

15

The Purple

Opium

→ Samson J.

P.K.

The People of the State of Illinois.

To the Clerk of the Circuit Court for the County of... *Monroe* Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of... *Monroe* County, before the Judge thereof, between.....

The People of the State of Illinois

Plaintiff, and... *Lehrer Topher H. Pinner*

Defendant, it is said manifest error hath intervened to the injury of the aforesaid... *Lehrer Topher H. Pinner*

as we are informed by... *him* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to the Justices of our Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid, at Mt. Vernon, in the County of Jefferson, on the first Tuesday in June next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, SIDNEY BREESE, Chief Justice of the Supreme Court,
and the seal of said Court at Mt. Vernon, this... *second* ...
day of... *December* in the year of our Lord, one
thousand eight hundred and... *sixty seven* ...

R. D. Willinks

Clerk of the Supreme Court

SUPREME COURT
FIRST GRAND DIVISION.

Christopher H. Pinker

PLANTIFF IN ERROR

VS.

The People of the State of Illinois

DEFENDANT IN ERROR.

WRIT OF ERROR

FILED.

Presented to Court 2nd Feb 1864
Wm. Williams
CL

This writ of Error is made a supersedeas and it is ordered according to the Act in this behalf.

Chief Justice of the Supreme Court of Illinois

RECEIVED in the record and proceedings in this in the execution of the judgment of a writ which was in the

State of Illinois

The People of the State of Illinois

First Grand Division

State of Illinois

*and proceedings being imposed, we may come to be done thereby, to correct the error what of right ought to be done
before our Justice appeared, at Mr. Vassar in the County of Jefferson, on the first Tuesday in June next, that the record
proceedings of the Court appeared, with all things touching the same, under your seal, so that we may have the same
thereof be given, you distinctly and openly, without delay, and to the Justice of our Supreme Court the record and
corrected in due form and manner, and the Justice be done to the Justice accordingly, committed you that if judgment
is not now imposed by... complaint and we being a writ that error is not there to show to*

WITNESSETH... *Chief Justice of the Supreme Court*
and the seal of said Court at Mr. Vassar this...
day of... in the year of our Lord one
thousand eight hundred and...
Wm. Williams

Chief of the Supreme Court

I never talked with Mathias Kram, Ex. J. P., nor told him that I would not have brought the charge if the defendant had not taken away his property. I neither made such a statement, two weeks after 31st day of July, nor in a conversation at my house three months after that date; had no conversation with him at all.

Subsequent to the affair, she said, the old man wanted to know when they were going to sue, for if they were not going to sue, he was; he wanted his good name.

- 11 August Preisker, sworn and testified: On third of August, 1864, I asked the defendant what he did on the 31st of July? His answer was, "What did I do?" Witness rejoined, "You know well enough." The old man got very angry. I heard a conversation between my wife and my father. My wife said to my father, "I have often told you I would not be untrue to my husband." The old man replied, "That was not to be untrue to her husband." He further said: If his son and daughter-in-law did not desist from their charges, he would take his property away,

Cross-examined.—The only conversation I had with my father was in the field; my wife was about twenty-five steps off; I asked him, "what he had done with my wife?" Defendant answered in a loud tone, "what did I do?" I told him, "he knew." He said, "I will go and see her about it." He went to where my wife was, and I started my horses plowing in a trot to get round near them; I heard the old man say to my wife, "It did not hurt you. I used your person." My wife said to him, "I often told you I would not be untrue to my husband."

- 12 The old man replied, "That was not to be untrue to him."

I did not go to them; there was a sink-hole between, them and me, and because my horses would run away. Complaint was made for Rape against defendant two weeks after 31st of July. The old man replevied his property on the same day the complaint was made.

The Prosecution rested their case.

Defendant introduced Mathias Kramn, sworn and testified: August Preisker's wife and her brother came to my house to enter complaint for Rape. They said the old man had taken away his property and they were going to make him pay for it. They also said that if Preisker had not taken away his property they would not sue. This was about 14th of August, A. D. 1864.

Here the defendant rested his case. This was all the evidence on either side.

- 13 Among the instructions given was the following in behalf of the People. Number three (3):

That if the jury believe from the evidence that the defendant is not guilty, as charged in the first count of the indictment, but believe him guilty of an *attempt*, as charged in the second count, your verdict should be, "guilty as charged in the second count of the indictment, and fix the term of his confinement in the penitentiary not less than one nor more than fourteen years," to the giving of which the defendant at the time excepted.

- 14 Verdict of guilty.

Motion for new trial.

- 15 Motion overruled.

Certificate of Clerk of record.

Certificate of Judge of correctness of record and assignment of errors.

ASSIGNMENT OF ERRORS.

1. The verdict was against the law.
2. Against the evidence.
3. The second count of the indictment ought to have been quashed, &c.

O'MELVENY & BARNUM,

Attorneys for Plaintiff in Error.

Priester vs The People

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Abstract

Filed 29th May 1868
 R. D. Williams
 clerk

Master vs The People

Brief

Filed 29th May 1858

W. H. Williams
Att

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O'MELVENY & BARNUM,

Attorneys for Plaintiff in Error.

Riesker
vs
The People &c

Abstract
Brief of Plea

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Filed 29th May 1808
R. W. W. Clerk

Tricker vs The People

Brief

IN THE SUPREME COURT

OF THE STATE OF ILLINOIS

JUNE TERM, A. D. 1858

Filed 29th May 1858
W. M. Milbanks
clerk

JOHN W. TRICKER, Plaintiff in Error,
vs
THE PEOPLE, Defendants.

DEBTS

The People vs. John W. Tricker, Plaintiff in Error, vs. The People, Defendants. This is a writ of Habeas Corpus, and the Court is of the opinion that the writ should be granted. The People vs. John W. Tricker, Plaintiff in Error, vs. The People, Defendants. This is a writ of Habeas Corpus, and the Court is of the opinion that the writ should be granted.

W. M. Milbanks, Clerk of the Court.