

## Syllabus.

shown they were, by such exposure, operated on in some way, to the prejudice of the prisoner, we do not think a verdict, for that cause alone, should be set aside. That, with other causes, would have weight, but of itself could not influence the judgment of the court to disturb a verdict, when from the whole record, it appears justice has been done.

We cannot perceive that any rule of law has been violated by the circuit court to the prejudice of the prisoner. He has had a fair trial by a jury of his neighbors, and though we might not have found on the facts as they did, we cannot say their finding is so against the evidence as to justify interference by this court.

The judgment must be affirmed.

*Judgment affirmed.*

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## CHRISTOPHER H. PREISKER

v.

## THE PEOPLE OF THE STATE OF ILLINOIS.

1. INSTRUCTION—*should not be misleading.* Where a party is upon trial, on a charge of an assault with intent to commit a rape, and the jury are instructed that if they believe, from the evidence, that such party was guilty of an *attempt* to commit a rape, as charged, their verdict should be guilty; such an instruction was too vague, and tended to mislead the jury.

WRIT OF ERROR to the Circuit Court of Monroe county; the Hon. SILAS L. BRYAN, Judge, presiding.

The opinion fully states the facts.

Mr. W. H. BARNUM and Mr. H. K. S. O'MELVENY, for the plaintiff in error.

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Opinion of the Court.

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Mr. ROBERT G. INGERSOLL, Attorney General, for the people.

Mr. JUSTICE LAWRENCE delivered the opinion of the Court:

This was an indictment, the first count of which charged a rape, and the second, an assault 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:

“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.’”

The jury found a verdict of guilty, 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 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 anything, but with the actual commission of an assault, having in view a certain specific object, as the motive for the assault. The language of the instruction is altogether too vague, and may well have misled the jury. The judgment is reversed and the cause remanded.

*Judgment reversed.*

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