166

166

STATE OF MICHIGAN,

SUPREME COURT.

THE PEOPLE OF THE STATE OF MICHIGAN.

vs.

ORIN J. FREY.

APPEAL FROM CALHOUN.

RECORD.

FRED A. MAYNARD,
Attorney General.

O. SCOTT CLARK,
Prosecuting Attorney.

HULBERT & MECHEM,
Attorneys for Respondent.

BATTLE CREEK:
BURNHAM PRINTING COMPANY.
1896.

STATE OF MICHIGAN,

THE CIRCUIT COURT FOR THE COUNTY OF CALHOUN.

THE PEOPLE OF THE STATE OF MICHIGAN,

vs

GEORGE W. BROT AND OREN J. FREY.

The defendants having upon demand duly made become entitled to separate trial, said cause, on the information filed therein against said Oren J. Frey, came on to be tried upon the issue joined therein by said defendant's plea of not guilty heretofore entered. And upon the 2d day of October, 1895, a jury was duly called and impaneled for the trial of said cause, at which trial the regular stenographer of said court being unable personally to attend to his duties, one J. J. E. Linton, appeared and performed the functions of said stenographer during said trial, and upon the said trial the following proceedings were had and testimony produced.

The people produced evidence by various witnesses tending to show that said defendants, by virtue of certain threats to accuse of the crime of sodomy made to one Doubleday, the complaining witness in

said cause, for the purpose of extorting money, induced said Doubleday to give to said defendants his certain promissory notes, and those of other parties amounting to a total of $2,000; that the circumstances under which threats were made were, that said Doubleday was questioned relative to his purpose in being found near a certain hog yard, and that in the discussion which thereupon ensued the said defendants threatened that, unless said Doubleday would give them money or notes, as above stated, they would say that he had been guilty of the crime of sodomy, but that if he gave them the money or notes as before mentioned they would say nothing about it; and that said Doubleday because of such threats and promises did give said notes as aforesaid.

The complaining witness, Hiram M. Doubleday, testified substantially: that he had resided in Athens for several years, that he was about 65 years old, that he owned two farms—some other property—was worth, perhaps $10,000. That on the 17th of June, 1895, about 6 o'clock in the morning he was going past the slaughter house occupied by respondent Brot, on his way to one of his barns, that just as he got to the building the respondents came out and accused him of having been in the pen, which contained some hogs—and charged him with having had sexual intercourse with the sows.

The witness absolutely denied having been in the pen or having had anything to do with the hogs.

The witness further testified that in said conversation at the slaughter house, respondents told him that the punishment for said offence was twenty-five years in State Prison, and that they would swear him there.

That about ten o'clock of the same day witness saw respondent Frey go into the office of Charles A. Standiford, a justice of the peace in the village of Athens, where the

parties resided. That witness followed said Frey into the office.

Q. Can you tell us any reason why you went in there, except the fact that Frey was in there?

A. They were going to get out the papers, and I told Charlie,—the justice—"I am here if you want me."

Witness also testified that the day of the conversation above referred to, witness drove to Union City, about six miles, with his brother, and shortly after their arrival there, respondent Brot and constable Bruce drove up, and that witness had a conversation with them in which he told them that he didn't intend to run away.

Witness also testified that on the same day he gave respondents notes due him from other parties, amounting to $1,000, and promised to give his notes for the other $1,000. That the next day witness met Frey on the street and informed him that he—witness—intended to go and see his boy in Kent County, "And I said to Frey, 'will you let me go' and he said, 'If you will let me have the notes,' and I did."

Q. How did you happen to say "Will you let me go?"

A. He threatened to put the papers to me.

Q. And what was his reply?

A. "I will if you will give me the notes."

That the only consideration witness received for the $2,000 in notes was that they would let him alone and not send him to Jackson.

Upon cross-examination, said complaining witness testified that they were two to one, he "was afraid they would swear him over the road."

That respondents told witness they were going to get the papers out for him if he didn't do something, and the reason he gave them the $2,000 was "because they were going to swear me to Jackson."

Q. You were willing to pay $2,000 rather than tell anyone?

A. Rather than go to Jackson.

That the reason he went into the Justice's office that morning was because he "thought they were in there getting the papers."

Q. Now why did you not tell the Justice that you had been wrongfully accused?

A. They would swear I had done so and so.

Charles A. Standiford, a witness for the people, testified substantially; that he was a Justice of the Peace and had an office in the village of Athens. That on June 17th, 1895, the day of the alleged offence, respondent Frey came into his office about half past eight o'clock, and after speaking of a suit that he, Frey, had been interested in, said to witness "You will have a chance again in a day or two, and you will hear the damndest law suit before night you ever heard of." Frey did not explain what he meant, and just about the time he finished talking, the complaining witness, Doubleday, came in and said to witness, "I am here when you want me." That after being in the office about two minutes, Doubleday called Frey out and they had a conversation outside that witness could not hear. About half an hour afterward witness was sitting in front part of furniture store, which connects in the rear with the office, when Frey came in the door and Doubleday called him out. Frey "did not say anything, he went into the store door and turned around and I took it that he called me in and I got partly up—then Mr. Doubleday called to him to come out and he got up and shut the screen door. They went towards the bank."

"Mr. Frey in about an hour came in with Mr. Bruce,

the Constable, and sat down in the office and they didn't say anything, neither did I."

In about two minutes Mr. Brot came in, and Frey says, "Lon Bruce, I want you to go to Union City" and he says "All right," and Brot says, "Will you go or not," and he says "I will" and they all went out. Know of Doubleday going out of town about ten o'clock that day with his brother—said he was going to Union City. They started about the time Frey, Brot and Bruce were in my office.

Upon cross-examination, witness Standiford, in reply to questions as to what Frey said or did while Doubleday was present, testified "He kind of looked at Doubleday and winked as though he meant him when he said the damndest law suit, and when he went out he done the same thing again."

Alonzo K. Bruce, a witness also produced on the part of the people, testified substantially: that he was a constable. Monday morning at eight or nine o'clock, respondent Frey called witness into Justice Standiford's office; that Doubleday called Frey out of the office. Frey came back again in a few minutes and said to witness, "Lon I guess I will have you go to Union," he said he might want me and didn't say what for. I think he said to go with Brot. Neither Frey nor Brot told him what they wanted him to go for. Met Doubleday on the street. "The first that he said was, 'I will ride back with you to Athens.'"

Q. Did you hear Mr. Doubleday say anything in relation to his running away, or not running away?

A. I think he said something about he should not run away.

Q. What called that up?

A. I don't know, I suppose he thought we were after him.

Q. What made you think he supposed that?

A. He kind of acted that way.

Neither Brot nor Frey ever explained to witness the object of the trip to Union City. Never gave any reason or excuse for the trip. Witness had no other business there.

Witness also testified that before he went to Union City, he went to the office of a Mr. Love in Athens, and inquired as to the penalty for having intercourse with a dumb brute.

For the defense:—Both respondents admitted having received the notes in question from the complaining witness for no consideration other than that growing out of the facts in this case, but both respondents claimed that the facts were, and introduced testimony on their part to prove that what they threatened to accuse complaining witness of, was putting his fingers in the private parts of sows—of "fingering" the sows, and both respondents denied that they accused or threatened to accuse complaining witness of having criminal intercourse with the sows. That on the morning of June 17th, they met by appointment at the slaughter house to watch for Doubleday.

Brot testified among other things that he really didn't know how Bruce came to go to Union City with him excepting that Frey said so, and in reply to a question as to the object of their trip, he replied "That kind of made Doubleday feel uneasy and made him give up the other thousand." That he and Frey divided the notes between them. Witness corroborated the evidence of Bruce as to the object of the visit to Union City and what was said by Doubleday about his not going to run away, and offering

to ride back to Athens with them. That they had no other business there, etc.

The said defendant, Oren J. Frey, controverted, by the testimony given in his behalf, the facts stated by said Doubleday, and the credibility and good character of the respondent became a material part of said controversy.

And thereupon one Henry Thomas was produced as a witness in behalf of said defendant, and testified that he had known the respondent three years or over; was acquainted with the reputation as to character and good standing of said respondent in the vicinity in which he resided, and should call it good. On cross-examination said witness testified that his conclusion was based upon his dealings with the defendant and defendant's actions, what he knew of his dealings, that he never heard anything against defendant's reputation, nor knew of his having any trouble there in Athens, except a little difference in deal; that he never knew of his having any business troubles; and that further questions and answers were put to said witness as follows:

Q. Did you ever know of his attempting to commit suicide at Athens?

A. No, sir.

Q. Did you hear about it?

A. Yes, sir.

Q. What time was that?

A. About the time it occurred.

Q. Did it occur?

Mr. Hulbert: I object to that.

The Court: Take the answer.

Note exception for defendants.

Mr. Hulbert: I object to the question as put, as to whether or not respondent ever attempted to commit

suicide, or rumored to have so done, as having no legitimate tendency to rebut or contradict or weigh against his reputation and good character.

The Court: Take the answer.

Note exception for defendants.

Mr. Clark: You say it is generally understood and believed that such is the fact?

A. I could not tell you. I have heard it was a fact.

Q. And you heard it from different sources?

A. I could not tell you as to that.

Q. Did you ever hear any denial of it?

A. No, sir.

Said defendant also produced one Frank Nixon, who, upon direct examination, testified substantially as follows: That he considered defendant's "character and reputation" good.

Upon cross-examination the witness testified in substance, that he had heard about defendant having some little trouble.

Q. What was the character of that trouble?

A. Something about a girl matter.

The witness also testified, without objection, that he had heard about defendant attempting suicide, that he thought this attempt was after the trouble about the girl, but he was not certain as to that. And in reply to a question as to whether the attempted suicide was not in connection with that trouble, he replied that possibly it was, he did not know.

And the said defendant further produced one M. J. Wood, who was present and heard the testimony of previous witnesses, and who testified in behalf of said defendant, substantially, that he had known defendant for about

three years; and on being asked if he was acquainted with his reputation and character, and answered that as a business man he considered it good in the way of dealing, business, trade, etc.

Q. If you want to add any thing to that, do so.

A. I have heard some reports as to his character heretofore, but not as a business man in any way.

Q. State what you heard, if you want to qualify your statement.

A. I don't know unless I am asked the questions.

Witness also testified, upon cross-examination, that he did not know defendant before he came to Athens; that he had never heard that defendant was tricky, but that he was a very good judge on a trade; if he wanted to trade horses he would look to another man than defendant; that he had the reputation of making good bargains for Frey, but not in a dishonorable way; that defendant was quite a hard drinking man when witness first became acquainted with him, but had taken the gold cure. And further, witness was asked by questions and answers as follows:

Q. You know about this girl trouble?

A. Yes, sir.

Q. And also about the suicide?

Mr. Hulbert: We object to all proof or attempt at proof in regard to the attempt at suicide as not tending to break down his character.

Court: I think you may take the testimony.

Mr. Clark: When you were asked in regard to his general reputation, why didn't you give that?

A. I thought you would ask this question.

Q. In other words you would say what was good for the defense?

A. I answered part of the questions and answered them straight.

Q. What you mean to say, is you know some good things and some bad.

A. Yes, sir.

After the conclusion of the testimony which has been stated above, together with other testimony both on behalf of said defendant and the people, the circuit judge proceeded to charge the jury as follows, so far as can be ascertained from the imperfect minutes furnished by the stenographer reporting the trial, but which charge has been corrected by the notes and recollection of the judge, and the requests of the defense which were given in full and were preserved.

Charge of the Court and certain other proceedings, as taken by the stenographer and furnished by him as a transcript of his minutes on request therefor for use on motion for new trial.

STATE OF MICHIGAN,

THE CIRCUIT COURT FOR THE COUNTY OF CALHOUN.

THE PEOPLE,
vs.
BROT, ET. AL.

CHARGE OF THE COURT.

Gentlemen of the Jury:—This is one of the unfortunate filthy cases that sometimes get into court, it involves plain terms, and common sense, but is a matter that should receive from you, your best attention, yet, we are

not trying the case which it is suggested Mr. Doubleday was accused of, we are trying another case, in which it becomes necessary to bring in more or less of that accusation. The statute under which Mr. Frey is being prosecuted, so far as it appertains to this case, reads, "If any person either verbally or in writing or printed communication, may threaten to accuse another of any crime or offense, with the intent to extort money from such person, etc., he shall be punished, etc."

Now I want to say to you in the outset, that it will be necessary, and I think it will be no trouble to you to do it, to understand the offence with which this man is charged.

Of course Mr. Frey should not be convicted upon general principles, he should be convicted of the offence charged, and the statute I read to you, and the information I now read to you filed against Mr. Frey: "That he did verbally and unlawfully threaten to accuse one Doubleday of a crime, to wit:—sodomy and bestality, with the intent to extort money from him the said Doubleday.

Now to convict Mr. Frey in this case, the prosecution must prove the threat, and second to accuse of some crime or offence committed, and third, the threat must accuse of some crime or offence to extort money, because that is the language in the information.

While it may not be necessary, and there has been so much said about it, possibly it would not be necessary to make this definition, yet I think it better to do so. A threat in criminal law is a menace, to work injury against the liberty or rights of another is a crime, and this means not only in this case to be a threat, but to accuse of a crime or offence, is an act committed in violation of public law, and the offence is a crime or misdemeanor or breach of the criminal law.

Now in this case it is alleged in the information, that they threatened Mr. Doubleday of sodomy or bestiality. Practically there is no difference between these offences, although there is a slight difference.

Sodomy is the offence of carnal knowledge of man with man, or man with woman in an unnatural way. Bestiality is a connection between a human being and a brute, and the crime of sodomy is punishable, and our statutes provided that every person who commits the abominable and detestable act either with mankind or any beast, must be punished; so that this accusation if it was made as stated in this information to accuse Mr. Doubleday of the crime of sodomy and bestiality, if he accused him of that he would have accused him of a crime. If the threat was to accuse him to extort money, then the conviction would be complete.

Now the defendant Frey is charged with threatening to accuse Mr. Doubleday of sodomy and bestiality with the intent to extort money, and you must be able to find that Frey maliciously threatened, and you must also find a threat.

Second, that Frey accused Doubleday of sodomy and bestality, and the two acts are practically the same, it means the carnal knowledge of one man with another man, that is the attempt to penetrate by one man, the person of another man, which is more technically speaking bestiality.

The penetration of the body of a beast, by the fingers of a man, as in this case the act of fingering a sow, may not be sodomy and bestiality, as accused, and you must find beyond a reasonable doubt that Frey accused him of having intercourse with the sow, with his private parts; if he only intimidated him for fingering a sow, then the prosecution must fail, even if he brought him in fear; if they

threatened him, if you find they threatened him of fingering the sow, that is not within the information or the statute, and you could not find for the prosecution.

If all they intimated was a fingering and not a carnal connection, you must acquit, and the prosecution must convince you of what they set up, that Mr. Doubleday was accused of connection, or had connection.

You have heard the testimony in the case, and it is for you to say whether he was threatened under a criminal action or not of sodomy and bestiality. If you find that he was accused of sodomy and bestiality, you must find it was for more, the threat made for the purpose of procuring a farm or notes is not sufficient alone if the threat was made to extort money, and the evidence shows that to be the case, it does not matter what they finally settled upon, nor does it make any difference whether it was money or anything, and in this case to convict under the information, it must be a threat to extort money; the settlement upon notes would not cut any figure, only to throw light on the threat if any was made, nor would it make any difference what they did get from him, if they did not accuse him of criminal intercourse with the sows, as I have before told you, and as to whether Frey has a right to keep these notes that will be decided in the civil action pending now in this court.

That is about all I can tell you, and I have given it to you in as delicate language as I can, and as brief as I can, and you must consider it, as unpleasant as it is, it is a serious offence to make against a man, to accuse him of any criminal offence for the purpose of extorting money from him, and if this man is guilty of it he should be convicted, and if not, he should be acquitted.

I want to call your attention to some testimony that was stricken out. There was Dr. Wrights testimony as to

what he told him of what he knew about someone—that is stricken out, and you do not consider it at all, and I want also to call your attention to the testimony of William Broceau, the barber, if it and as far as it referred to anything else, the sale of his property there, as you may find, then it would not cut any figure, and if you believe in the testimony as shown by the evidence in the case and that it had something to do with this defendant, then you have a right to consider it.

Now the burden of proof is with the people and they must satisfy the jury beyond a reasonable doubt of what they claim. You know the respondent is presumed to be innocent, and that presumption follows all through the case, and until it is overcome by proof on the part of the people beyond a reasonable doubt of the guilt, and by a reasonable doubt is meant, one that is founded on reason, not raised in your mind by sympathy or from a desire to acquit, it must arise from the case itself, and in looking at it as the evidence shows it to be, if you have a reasonable doubt of the guilt of the respondent, you should acquit him; if it is a fair doubt, growing out of the case, if you have any such doubt he is entitled to the benefit of it and you should acquit him. I think that covers all that I need to say.

Referring gentlemen, to the testimony of the barber Broceau, you have heard it, I simply add to that as requested, even if you find that the dates given to the barber did have reference to that matter, and that it was part of the plan that this man had, I remind you of what I already said in the case, it matters not what Frey planned if he did not accuse or threaten to accuse Doubleday of sodomy or beastiality, in other words, to recapitulate—that there must be a threat, a threat to accuse of a crime or offence, and I think you will have no trouble with the definition,

must have been to accuse or extort money, and your verdict will be guilty or not guilty, as you find.

Mr. Powell: (a juror) Your honor, we are unable to agree upon a verdict, and it was thought best to so report to the court, and possibly some of the jurymen may want further instruction from the court in regard to a certain point.

The Court: Are you in trouble about any question of law?

The Foreman: It does not appear to be a question of law.

The Court: What is it, a trouble about some fact?

The Foreman: I think it would be better for one or two of the jurors who are in doubt to define it themselves, I am not altogether clear myself.

One of the jurors: We do not all interpret the charge of the court in regard to the information, and the weight of evidence and doubt, the general doubt taking it as a whole.

The Court: There is one thing I will suggest to you now that possibly I did not make clear enough before, but I want to say to you now, I do not mean to cause any intimation one way or the other and you must not be guided by anything I might think about this case. You are the judges of the facts always. I said to you, after reading the information which was an information in which it is alleged that Mr. Frey threatened to accuse Mr. Doubleday of sodomy and bestiality with intent to extory money from him,—that is the gist of the information. Now there must be a threat to accuse of some crime or offence, and that must be to extort money. Now it occurred to me that possibly you might get to discussing what was done at the barn on the morning in question, what was actually done by Mr. Doubleday. I want to say that it

does not make any particular difference what he done, or whether he did anything; the gist of it is: What did these men threaten to accuse him of? Whether they did or not, and if they did not accuse him of the actual crime they should be acquitted, and if they did not threaten him with the idea of extorting money then they would not be guilty, and if they did threaten him and whether he did or did not use his fingers or touch the sows at all, the question is, whether he did threaten to accuse of this crime or whether he did not, or did something happen there that Mr. Doubleday did not want known, and did he intercede to get them to keep the matter to themselves; and he claims, his language is—"they threatened me with an offence." Of course he told it in vulgar language. If that is what is meant, take the language as you generally understand it, then they did threaten him and it would not make any difference whether he was or was not. If they caught him at fingering and he interceded for himself, undertaking to get them to conceal it by making offers, then they are not to blame.

In the question of doubt, it is incumbent for the people to prove their case to satisfy the jury beyond a reasonable doubt of the guilt of the prisoner, and the presumption of innocence which attends the person applies to every element, and it goes with him all through the case until that presumption is proved which satisfies you of his guilt, and that reasonable doubt is what its name merits, it is not a captious doubt or one in fancy, or a doubt that rises in sympathy, but a doubt that grows out of the case, a doubt that when you view the case in all its aspects, taking the testimony all together arising out of the case—in other words considering the case as a whole, if you have that reasonable doubt he is entitled to it.

Mr. Hulbert: This is true as a matter of law, if the

jury should find that Mr. Doubleday did do something there, then it would in this sense be something, because it would be a contradiction of everything he has said, and therefore it would affect his credibility as a witness.

The Court: So far as that point is concerned, you weigh up the testimony, and hear the witnesses and you weigh up their testimony as you think is right, and best and just. You must take into consideration the interests of the witnesses, and this applies to all witnesses.

Now it stands to reason that if you believe what Mr. Doubleday says, if you believe his position to be true, that they came out upon him there, said to him what they did say, why conviction would possibly follow, probably follow, on the other hand, if you believe what Mr. Frey and Brot say, that they did not accuse him of any offence, and they found him doing what he was doing, and they did not accuse him of any crime for the purpose of getting money from him, he ought to be acquitted.

Mr. Hulbert: And in every reasonable doubt that arises, Mr. Frey is entitled to the benefit of it.

The Court: The presumption of innocense, and the reasonable doubt attachs to every element of the offence, and if you size it all up, taking into view all the evidence of the case, and you have a reasonable doubt give him the benefit, and if you have no reasonable doubt, and are satisfied beyond a reasonable doubt, then you want to find a verdict of guilty.

Do you understand gentlemen, what you were asking about in regard to the information? The information charges Mr. Frey with having maliciously threatened to accuse Mr. Doubleday of sodomy and bestiality with the intent to extort money from him, Doubleday; now if he did that, then he is guilty if he did not he is not guilty of the offence as charged.

The jury here retired.

Later in the evening the jury not having returned, the Court ordered them brought into the room, to be given further instructions for the night, in case they did not agree on a verdict until later in the night, and then if so to bring in a sealed verdict at 9:15 the next morning.

The Court: I understand gentlemen, that you have not agreed as yet, is that so Mr. Foreman?

The Foreman: We are very little nearer an agreement than we were before, and I do not think there is any possible chance of our coming to an agreement, as the jurors that have so stated, that their minds are fixed positively, and I felt that if we were going to stay out all night, that we rather have a better place to stay in.

The Court: I have no disposition to change anyones mind but I want to say to the jurors that many times in the discussion of a question in a fair and impartial way will let a good deal of light into one's mind. An obstinate man is not in his place on a jury, and I do not say that because a man may have a mind of his own, that he is obstinate; but it seems to me that this is a case for a fair consultation among the jurors and that there should be no trouble in coming to an agreement, for the reason that the issues are not complicated or many of them, but if any juror feels that he cannot conscienciously agree with his fellow jurors he has a right to his opinion, and still I think if you discuss this case carefully that you should not have any trouble in coming to an agreement, and I will also say, that I will leave you have this room for the evening.

The Foreman: We have discussed the matter very carefully and in the best of feeling, and the jurors who are in the minority have their argument, and as I stated, they both said they could not and would not change their ballot.

The Court: Well let me say this, that I have suggested, I think it is a case that will bear more consideration than has been given this case, and I will prepare for a sealed verdict.

If you agree upon a verdict, you can write the verdict upon a paper and each of you sign it, and seal it and give it to the foreman and then you can separate, and come in to the court on Monday morning and deliver it in court, I do not see any other way gentlemen.

Now as I said before, I have no disposition, because I do not know how you stand, and I have no disposition to coerce any juror, but discuss the matter and see if you cannot come to a fair understanding of it.

You can have this room warmed if you like.

I omitted to say one thing, that you must agree upon a verdict in order to seal it and separate, you cannot agree to disagree, you must agree on a verdict of guilty or not guilty and agree to disagree.

Charge of the Court and certain other proceedings as the Court on January 11, 1896, re-wrote the same, partly from reference to his minutes, partly from the requests of respondents, and partly from memory, as stated by the Court in his letter of January 11, 1896.

STATE OF MICHIGAN,

THE CIRCUIT COURT FOR THE COUNTY OF CALHOUN.

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vs
ORIN J. FREY.

CHARGE OF THE COURT.

Gentlemen of the Jury: This is one of the unfortunate filthy cases that sometimes get into court. It involves not only the use of plain terms and common sense but is a matter that should receive from you your best attention. We are not trying the case which it is suggested Mr. Doubleday was accused of. We are trying another case in which it becomes necessary to bring in more or less of that accusation. The statute under which Mr. Frey is being prosecuted, so far as it appertains to this case, reads: "If any person, either verbally or by any writing or printed communication, maliciously threaten to accuse another of any crime or offense, with the intent thereby to extort money from such person, etc., he shall be punished, etc."

Now, I want to say to you in the outset that it will be necessary, and I think it will be no trouble for you to do it, to understand the offense with which this man is charged.

Of course, Mr. Frey should not be convicted upon general principles; he should be convicted of the offense

charged against him and nothing else. I haye read the statute to you and the information filed against Mr. Frey I now read to you: "That he did, verbally, unlawfully and maliciously threaten to accuse one, Hiram M. Doubleday, of a crime, to-wit, the crime of sodomy and bestiality, with intent then and there to extort money from him, the said Doubleday."

Now, to convict Mr. Frey in this case, the prosecution must prove:

First. The threat to accuse.

Second. The threat must be to accuse of some crime or offence.

Third. The threat must be to accuse of some crime or offence to extort money, because that is the language in the information.

While it may not be necessary, and there has been so much said about it, possibly it would not be necessary to make this definition, yet I think it better to do so. A threat in criminal law is a menace to work injury to the liberty or rights of another, and a crime is an offence against public law. This means, not only in this case that there must be a threat, but a threat to accuse of a crime or offence, an act committed in violation of public law, and the offence must be a crime or misdemeanor or breach of the criminal law.

Now, in this case it is alleged in the information that Frey threatened Mr. Doubleday of sodomy or bestiality. Practically there is no difference between these offences, although there is a slight difference. Sodomy is the offence of carnal knowledge of man with man or with woman in an unnatural way. Bestiality is a connection between a human being and a brute, and the crime of sodomy is punishable and our statutes provide that every person who commits the abominable and detestable act,

either with mankind or any beast, must be punished; so that this accusation if it was made as stated in this information to accuse Mr. Doubleday of the crime of sodomy and bestiality, if he accused him of that he would have accused him of a crime. If the threat was to accuse him to extort money, then the charge in the information would be made out.

The respondent Frey is charged with threatening to accuse Mr. Doubleday with sodomy and bestiality with intent to extort money. In order to find him guilty, you find several things to be true, and among others these facts:

First. That they maliciously threatened. In other words you must find a threat.

Second. That Frey threatened to accuse Doubleday of sodomy and bestiality.

Sodomy and bestiality are practically the same in criminal law and they have a well settled meaning. It means the having carnal intercourse by one man with another man, against the order of nature, that is by an attempted penetration of the body of one man with the organ of generation—the penis—of another man, or the penetration of the private parts of a beast by the penis, the private parts of a man. The penetration of the body of a beast with the fingers of a man is not in any manner the crime of sodomy or bestiality, however abominable or detestable a practice the fingering of a sow may be, it is not sodomy or bestiality and the prosecution must convince you beyond a reasonable doubt that Frey accused him of having intercourse with the sow with his private parts. If he only accused or intimated or threatened to accuse of fingering the sow, then the prosecution must fail. Even if Frey did threaten Doubleday and have him by one means and another in fear of body or mind, but if that fear was be-

cause he was afraid that Frey and Brot—one or both—would tell that they had seen him fingering the sows, then I charge you that the fact that they threatened him was not enough to convict Frey, because you must also find that they threatened to accuse him of sodomy or bestiality and if what they did threaten him about was the fingering of the sows, that is not within the information and you cannot convict Frey on this information. Under the information you must acquit Frey, no matter what notes he got or value he received or threats he made, directly or indirectly, unless you find that he threatened to accuse Doubleday of having carnal connection with the sows, for it takes carnal intercourse to make sodomy or bestiality.

If all they intimated was the fingering of and not the carnal connection with the sows, you must acquit Frey because the fingering of the sows is not either sodomy or bestiality and the prosecution must convince you of just what they have alleged, viz: That Frey threatened to accuse Doubleday of having comitted carnal intercourse with these animals.

You have heard the testimony in the case and it is for you to say whether he was threatened with the criminal action or not, of sodomy or bestiality. If you find there was a threat to accuse of the crime of sodomy or bestiality, you must also find that such threat was made for the purpose of extorting money, in order to convict under the information here. A threat made for the purpose of procuring a farm or a threat made for the purpose of procuring notes is not sufficient alone to sustain a conviction. It does not matter what they finally settled upon. It makes no difference whether it was money or other property, but to convict under the information, the threat must have been to extort money. The settlement upon notes would not cut any figure, only to throw light on the threat

if any was made nor would it make any difference to what extent Frey or Brot planned to get money or notes or anything of value from Doubleday or what they did get from him, so long as they did not accuse him of criminal intercourse with the sows, as I have before told you, and as to whether Frey has a right to keep these notes or any part of them, is something you have nothing to do with in this case. That will be decided in the civil action which has been brought to recover them.

That is about all I can tell you and I have given it to you in as delicate language as I can and as brief as I can and you must consider it, as unpleasant as it is. It is a serious offense to make against a man, to accuse him of any criminal offence for the purpose of extorting money from him, and if this man is guilty of it he should be convicted, and if not, he should be acquitted.

I want to call your attention to some testimony that was stricken out. There was Dr. Wright's testimony as to what he told him of what he knew about someone—that is stricken out and you do not consider it at all, and I want also to call your attention to the testimory of William Broceau, the barber, it—and as far as it referred to anything else, the sale of his property there, as you may find—then it would not cut any figure and if you believe the testimony as shown by the evidence in the case and that it had something to do with this defendant, then you have a right to consider it.

Now, the burden of proof is with the people, and they must satisfy you beyond a reasonable doubt of what they claim. The respondent is presumed to be innocent and that presumption follows him all through the case until it is overcome by proof on the part of the people, beyond a reasonable doubt of the guilt. By a reasonable doubt is meant one that is founded in reason, not raised in your

mind by sympathy or from a desire to acquit; it must arise from the case itself and in looking at it as the evidence shows it to be, if you have a reasonable doubt of the guilt of the respondent, you should acquit him; if it is a fair doubt growing out of the case, if you have any such doubt he is entitled to the benefit of it and you should acquit him. I think that covers all that I need to say.

Referring, gentlemen, to the testimony of the barber, Broceau, you have heard it; I simply add to that as requested, even if you find that the dates given to the barber did have reference to this matter and it was part of a plan these men had, I remind you of what I have already said in the case, that it makes no difference how or what Frey planned if he did not accuse or threaten to accuse Doubleday of sodomy or bestiality, in other words, to recapitulate; that there must be a threat, the threat must be to accuse of a crime or offence, (and I think you will have no trouble with the definition,) and third, the threat must have been to accuse of some crime or offence, to extort money.

Your verdict will be guilty, or not guilty, as you find the facts to be.

Mr. Powell: (A juror.) Your honor, we are unable to agree upon a verdict and it was thought best to so report to the court and possibly some of the jurymen may want further instruction from the court in regard to a certain point.

The Court: Are you in trouble about any question of law?

The Foreman; It does not appear to be a question of law.

The Court: What is it; a trouble about some fact?

The Foreman: I think it would be better for one or

two of the jurors who are in doubt to define it themselves; I am not altogether clear myself.

One of the Jurors: We do not all interpret the charge of the court in regard to the information, and the weight of evidence, and the doubt, the general doubt taking it as a whole.

The Court: There is one thing I will suggest to you now that possibly I did not make clear enough before, but I want to say to you I do not mean to give any intimation one way or the other as to the facts and you must not be guided by anything you may think I think about this case. You are the judges of the facts always. I said to you, after reading the information in which it is alleged that Mr. Frey threatened to accuse Mr. Doubleday of sodomy and bestiality with intent to extort money from him—that is the gist of the information. Now, there must be a threat to accuse of some crime or offence and that must be to extort money. Now, it occurred to me that possibly you might get to discussing what was done at the barn on the morning in question, what was actually done by Mr. Doubleday. I want to say that it does not make any particular difference what he did or whether he did anything. The gist of it is, what did these men threaten to accuse him of? Whether they did or not? If they did not accuse him of the actual crime then Frey should be acquitted and if they did not threaten to accuse him with the idea of extorting money then Frey would not be guilty. If they did threaten him, it is no matter whether he did or did not use his fingers or touch the sows at all. The question is, whether he did threaten to accuse of this crime or whether he did not, or did something happen there that Mr. Doubleday did not want known and did he intercede to get them to keep the matter to themselves. He claims, and his language is, "They threatened me with an offence."

Of course, he told it in vulgar language. If that is what is meant, taking the language as you generally understand it, then they did threaten him and it would not make any difference whether he was or was not meddling with the sows. If they caught him at fingering and he interceded for himself, undertaking to get them to conceal it by making offers, then they are not to blame.

As to the question of doubt; it is incumbent on the people to prove their case to satisfy you beyond a reasonable doubt of the guilt of the prisoner and the presumption of innocence which attends the person applies to every element of the offence necessary to a conviction and it goes with him all through the case until that presumption is removed so that you are satisfied of his guilt and a reasonable doubt is what its name implies; it is not a captious doubt or one founded in fancy, or a doubt that arises on account of sympathy but a doubt that grows out of the case, a doubt you have when you view the case in all its aspects, taking the testimony all together, a doubt arising out of the case—in other words considering the case as a whole, if you have that reasonable doubt, he is entitled to it.

Mr. Hulbert: This is true as a matter of law, if the jury should find that Mr. Doubleday did do something there, then it would in this sense be something, because it would be a contradiction of everything he has said, and therefore it would affect his credibility as a witness.

The Court: So far as that point is concerned, you weigh up the testimony; you hear the witnesses and you weigh up their testimony as you think is right and best and just. You must take into consideration the interest of the witnesses, and this applies to all witnesses.

Now, it stands to reason that if you believe what Mr. Doubleday says, if you believe his position to be true, that

they came upon him there, said to him what he said they did say, why, conviction would possibly follow, probably follow. On the other hand, if you believe what Mr. Frey and Brot say, that they did not accuse him of any offense and they found him doing what they say he was doing and they did not accuse him of any crime for the purpose of getting money from him, he ought to be acquitted.

Mr. Hulbert: And in every reasonable doubt that arises, Mr. Frey is entitled to it.

The Court: The presumption of innocence and the reasonable doubt attaches to every element of the offense and if you size it all up, taking into view all the evidence of the case, and you have a reasonable doubt, give him the benefit of it, and if you have no reasonable doubt and are satisfied beyond a reasonable doubt, then you will find a verdict of guilty.

Do you understand, gentlemen, what you were asking about in regard to the information? The information charges Mr. Frey with having maliciously threatened to accuse Mr. Doubleday of sodomy and bestiality with the intent to extort money from him, Doubleday. Now, if he did that, then he is guilty; if he did not, he is not guilty of the offense as charged.

The jury here retired.

Later in the evening, the jury not having returned, the court ordered them brought into the room to be given further instructions for the night, in case they did not agree on a verdict until late in the night, and if so to bring in a sealed verdict the next morning.

The Court: I understand, gentlemen, that you have not agreed as yet. Is that so, Mr. Foreman?

The Foreman: We are very little nearer an agree-

ment than we were before and I do not think there is any possible chance of our coming to an agreement as the jurors that have so stated, that their minds are fixed positively, and I felt that if we were going to stay out all night, that we rather have a better place to stay in.

The Court: I have no disposition to change anyone's mind, but I want to say to the jurors that many times the discussion of a question in a fair and impartial way will let a good deal of light into one's mind. An obstinate man is not in his place on a jury, and I do not say, that because a man may have a mind of his own he is obstinate, but it seems to me this is a case for a fair consultation among the jurors and that there should be no trouble in coming to an agreement for the reason that the issues are not complicated nor are there many of them, but if any juror conscientiously feels that he cannot agree with his fellow jurors, he has a right to his opinion; still, I think if you discuss this case carefully you will not have any trouble in coming to an agreement. I will leave you this room for the evening.

The Foreman: We have discussed the matter very carefully and in the best of feeling and the jurors who are in the minority have their argument, and, as I stated, they both said they could not and would not change their ballot.

The Court: Well, let me say this, what I have suggested; I think it is a case that will bear more consideration than has been given it and I will arrange for a sealed verdict, If you agree upon a verdict, you can write the verdict upon a paper and each of you sign it and seal it and give it to the foreman and then you can separate and come into court in the morning and deliver it in court. I do not see any other way, gentlemen.

Now, as I said before, I have no disposition, because

I do not know how you stand, and I have no disposition to coerce any juror, but discuss the matter and see if you cannot come to a fair understanding of it.

You can have this room warmed if you like.

I ommitted to say one thing, that you must agree upon a verdict in order to seal it and separate; you cannot agree to disagree; you must agree upon a verdict of guilty or not guilty. You cannot agree to disagree.

LETTER OF JUDGE REGARDING CHARGE.

FIFTH JUDICIAL CIRCUIT. CLEMENT SMITH, Judge.
Barry, Eaton and Calhoun. Residence, Hastings, Mich.

January, 11th, 1896.

HULBERT & MECHEM,

Battle Creek, Mich.

Gentlemen:

I enclose the charge in People vs. Frey corrected as best I can. It is unfortunate, that such work has been done, as Linton did for us, I would never permit him to act as stenographer in my Court again. I cannot be certain that this is corrected as I gave it to the Jury, as I find the charge was largely oral.

I gave your requests word for word reading them from your writing. The bottom part of pages 1, 2, and all of page 3, and the greater part of 5 were given in the language as embodied in your requests which are on file in the case and speak for themselves. It does not seem possible that Linton could have done such work as his manuscript shows he did. You will see that he not only jumbled it very badly but actually left out considerable of it. The latter part of page 2, and all of them except the last line were read from your requests, as shown by my minutes, so

I know there is no doubt about this part of the corrected charge.

The first part of P. 2 was mainly taken from Black's law dictionary, but I haven't it, and so have corrected as best I could from memory. The remainder of the charge is corrected from memory.

I very much regret the situation that calls for such a condition of things, and trust that it will never happen again.

We had a foretaste of Linton's capacity in the Brown will case, which was as badly mixed as this, but in that case I was able to reproduce the entire charge.

Very truly yours,

CLEMENT SMITH.

RESPONDENT'S REQUESTS TO CHARGE.

The respondent Frey is charged with threatening to accuse Doubleday of the crime of sodomy and bestiality, with intent to extort money.

In order to find him guilty you must find several things to be true, and among others these facts.

FIRST.

That Frey maliciously threatened. In other words you must find a *threat*.

SECOND.

That Frey threatened to accuse Doubleday of the crime of sodomy and bestiality. Sodomy and bestiality are practically the same in criminal law and they have a well settled meaning. It means the having carnal intercourse by one man with another man, against the course of nature,— that is by an attempted penetration of the body of one man with the organ of generation,—the penis,—of another man,

or the penetration of the private parts of a beast by the penis, the private part, of a man.

The penetration of the body of a beast with the finger of a man is not in any manner the crime of sodomy or bestiality, and the prosecution must convince you that Frey accused Doubleday of having intercourse with those sows with his private parts. If Frey only accused or intimated, or threatened to accuse Doubleday of fingering the sows, then the prosecution must fail.

Even if Frey did threaten Doubleday and have him by one means and another in fear of body or mind, but if that fear was because he was afraid that Frey and Brot, one or both, would tell that they had seen him fingering the sows, then I charge you that the fact that they threatened him is not enough to convict Frey, because you must also find that they threatened to accuse him of sodomy or bestiality, and if what they did threaten him about was the fingering of the sows, that is not within the information, and you cannot convict Frey on this information.

Under this information you must acquit Frey no matter what notes he got or value he received or threats he made directly or indirectly, unless you find that he threatened to accuse Doubleday of having carnal connection with the sows, for it takes carnal intercourse to make sodomy or bestiality. If all they intimated was the fingering of and not the carnal connection with the sows, you must acquit Frey, because the fingering of the sows is not either sodomy or bestiality and the prosecution must convince you of just what they have alleged, viz: That Frey threatened to accuse Doubleday of having criminal carnal intercourse with those animals.

If the jury finds there was a threat to accuse of the crime of sodomy or bestiality, they must also find that such threat was made for the purpose of extorting money,

in order to convict under the information here. A threat made for the purpose of procuring a farm or a threat made for the purpose of procuring notes, is not sufficient alone to sustain a conviction.

Even if you find that the dates given to the barber did have reference to this matter, and that it was part of a plan these men had, I remind you that it makes no difference how or what Frey planned if he did not accuse or threaten to accuse Doubleday of sodomy or bestiality.

It makes no difference to what extent Frey or Brot *planned* to get money or notes or anything of value from Doubleday, or what they did get from him, so long as they did not accuse him of having criminal intercourse with the sows.

Frey cannot be convicted on "general principles"—he must be convicted of *the offence* charged against him and nothing else.

As to whether Frey has a right to keep these notes or any part of them is something you have nothing to do with in this case. That will be decided in the civil action which has been brought to recover them.

Whereupon the said jury retired and after deliberation returned into the court with a verdict of guilty against said respondent. And thereafter, and within the time permitted by law for that purpose, said respondent filed and duly entered his motion for vacation of the verdict so rendered and for a new trial, for the reason set forth in said motion (copy of which, and of the affidavits and papers upon which the same is based, is hereto attached and made a part hereof,) which said motion for new trial was by the court denied and to which said denial exception was duly taken, the opinion of the court denying such motion being hereby made a part of this bill of exceptions, exceptions being based thereupon and had thereto.

STATE OF MICHIGAN,

THE CIRCUIT COURT FOR THE COUNTY OF CALHOUN.

THE PEOPLE OF THE STATE OF MICHIGAN,

vs

OREN J. FREY.

And now comes the said respondent and move the court now here, that the verdict rendered by the Jury at the September, 1895, term of this court be vacated and set aside, and that a new trial may be had in the above cause for the following reasons, namely:

1. That the judge erred in submitting any question of facts at all to the jury.

2. That the judge erred in charging the jury in substance that the threat to accuse the complaining witness publicly of the commission of the alleged offense was sufficient, if found, to convict the defendant.

3. That the court erred in not charging the jury that it was necessary, in order to convict the defendant, to find that he threatened to set in motion the criminal law of the state against said complaining witness, and to accuse him before some court of competent jurisdiction, or to the officers of the law having charge of the prosecution of offenses, with the commission of the alleged offense.

4. That the court erred in omitting as an essential element of the crime with which defendant was charged,

that the defendant threatened to use some of the preliminary means necessary to cause the complaining witness to to be proceeded against for the offense named in the information in this case.

5. That the court erred in his charge to the jury in charging the jury when they returned to the court for additional instructions, that "if they believed Mr. Doubleday believed his position to be true, that they came upon him there and said to him what he says they did say, that conviction would probably follow."

6. That the court erred in charging the jury, when they so returned into court for instructions, that "a reasonable doubt must be a doubt that grows out of the case, a doubt which you have when you view the case in all its aspects, taking the testimony together, a doubt arising out of the case, in other words, considering the case as a whole."

7. That the court erred in charging the jury, when they so returned into court, that "the presumption of innocence and the reasonable doubt attaches to every element of the offense, and if you size it all up, taking into view all the evidence of the case, and you have a reasonable doubt, give him the benefit of it, and if you have no reasonable doubt, and are satisfied beyond a reasonable doubt, then you would find a verdict of guilty."

8. That the court erred in charging the jury, when they returned under orders of the court later in the evening, as follows: "An obstinate man is not in his place on a jury, and I do not say that because a man may have a mind of his own he is obstinate, but it seems to me that this is a case for fair consultation among the jurors, and there should be no trouble in coming to an agreement for the reason that the issues are not complicated, nor are there many of them."

9. That the court erred in charging the jury, in defining the offense of sodomy and bestiality, which was the alleged offense with relation to which the threats were averred to have been made by defendant, the said definition not being a correct statement of the elements necessarily constituting said offense.

10. That the stenographer reporting the trial is not able to give for the aid of the court or counsel, or to assist defendant in removing his case to the supreme court, or in moving for a new trial before the trial court, any reliable or correct transcript of the minutes of said trial, but that because of his incompetency it is impossible to obtain a correct transcript of the minutes of said trial, nor can the same be reviewed, because of the want of such record thereof.

11. That the court erred in allowing the witness Henry Thomas, who was called by the respondent to testify as to the general good character of the respondent, to be asked on cross-examination whether he ever knew of the respondent attempting to commit suicide at Athens, whether he ever heard about it, what time it was, whether it was generally understood and believed that such was the fact, whether the witness heard it from different sources, and whether the witness ever heard any denial of it, against the protests and objections of counsel for said respondent.

12. That the court erred in allowing the witness M. J. Wood, who was called by the respondent to testify as to the general good character of the respondent to be asked on cross-examination whether he did not know about the suicide; against the protest and objection of counsel for said respondent.

13. That the court erred in allowing and requiring said witnesses, Henry Thomas and M. J. Wood, to answer

said questions regarding said attempt at suicide, or rumor of attempt at suicide, against the protest and objection of counsel for respondent.

14. That the court erred in allowing, against the protest and objection of counsel for respondent, testimony in said case that said respondent had ever attempted to commit suicide, or that it was rumored that respondent had ever attempted to commit suicide at Athens, or elsewhere.

This motion is based on the records and files in this cause, and on such of the stenographer's minutes and notes, taken on the trial thereof, as are available.

HULBERT & MECHEM,
Att'ys for Respondent.

THOS. E. BARKWORTH,
Of Counsel.

STATE OF MICHIGAN,

THE CIRCUIT COURT FOR THE COUNTY OF CALHOUN.

THE PEOPLE,
vs
ORIN J. FREY.

The respondent in this case was convicted of maliciously threatening to accuse Hiram M. Doubleday of the crime of sodomy and bestiality with intent to extort money from said Doubleday, and makes this motion to set aside

the verdict of the jury rendered in the case and that a new trial be had. The motion is grounded upon 14 allegations of error.

As to the first, it is the opinion of the Court that there was sufficient in the case to submit the matter to the jury and that the submission of the same to the jury was not error.

As to the second, third and fourth allegations of error, it is the opinion of the Court that it is not necessary to prove that the defendant threatened to use any preliminary means necessary to cause the complaining witness to be proceeded against before some court of competent jurisdiction, but that the threat in this case, as alleged, was entirely sufficient upon which to sustain a verdict of guilty.

As to the fifth allegation of error, it seems to me a self evident proposition that if the Court was not in error in submitting the case to the jury and the Court is correct in its conclusions pertaining to allegations two, three and four, then the language of the Court to the jury that if they believed Mr. Doubleday, believed what he stated, etc., that conviction would probably follow, would be correct in principle and it was no error to give it.

As to allegations No. 6 and 7, it seems to me that the charge upon the question of reasonable doubt was entirely within the rule of the Court and that there was no possible chance for the jury to misunderstand it. The issues in this case were somewhat narrowed and it seems to me that it would be a reflection upon the intelligence of a jury, if they paid heed to the language of the Court, to say that they could be in any way mislead as to the presumption of innocence and reasonable doubt pertaining to every element necessary in order to convict.

As to allegation No. 8, I have to say that the entire charge upon the topic as to the duties of a juryman cannot

be, in my judgement, objectionable. Courts have to give jurors to understand and know that it is their duty to come to an agreement if they can do so fairly without violating their oaths and the jury were fairly instructed that if any juror conscientiously felt that he could not agree with his fellow jurors he had a right to his opinion.

As to ninth allegation of error, it is the opinion of the Court that the definition so far as this case was concerned was all that was necessary and all that could be asked, and as a matter of fact, it was given in the language of the respondent's request and I think fully states the law in the case, so far as this case is concerned.

As to the tenth allegation of error, this is a new question in court. With the admirable stenographer that attends this court, this question has never arisen. Since I have been upon the bench I have never had occasion in any way to contradict or dispute the record given me by the official stenographer of the circuit. It is unfortunate that we have a record not made by Mr. Hoedemaker the regular stenographer but by an outside man not entirely to be depended upon in this case, but taking into consideration that the reasons urged for a new trial are based mainly and almost entirely upon the alleged errors of the Court in his charge to the jury, I am satisfied that the case ought not to be reversed for this reason. I do not overlook the fact that some testimony must be obtained but I am entirely satisfied that a bill of exceptions can be settled without any difficulty and that there will be no trouble about counsel and Court agreeing substantially upon what the testimony is upon the questions which will be raised on settlement of the bill of exceptions.

I do not think there was error in permitting the cross examination of witnesses who swear to the good reputation, etc., of respondent, as to whether they had ever heard

of the attempt on the part of the defendant to commit suicide, as covered by allegations of error 11, 12, 13 and 14. It seems to me such cross examination was proper.

I am of the opinion that the motion for a new trial in this case should be denied, and an order may be so entered.

Dated, February 11, 1896.

CLEMENT SMITH,
Circuit Judge.

EXCEPTIONS TO DENIAL OF NEW TRIAL.

STATE OF MICHIGAN,

THE CIRCUIT COURT FOR THE COUNTY OF CALHOUN.

THE PEOPLE OF THE STATE OF MICHIGAN,

AGAINST

OREN J. FREY.

And now comes the above named respondent, by Hulbert & Mechem his attorneys, and seriatim takes exception to the ruling of the Court in denying the motion of the respondent for a new trial.

FIRST.

The respondent excepts to the decision of the Court in not granting a new trial upon the grounds set forth in respondent's reason 1.

SECOND.

And likewise excepts as to respondents reason 2.

THIRD.

And likewise excepts as to respondent's reason 2.

FOURTH.

And likewise excepts as to respondent's reason 3.

FIFTH.

And likewise excepts as to respondent's reason 4.

SIXTH.

And likewise excepts as to respondent's reason 5.

SEVENTH.

And likewise excepts as to respondent's reason 6.

EIGHTH.

And likewise excepts as to respondent's reason 7.

NINTH.

And likewise excepts as to respondent's reason 8.

TENTH.

And likewise excepts as to respondent's reason 9.

ELEVENTH.

And likewise excepts as to respondent's reason 10.

TWELFTH.

And likewise excepts as to respondent's reason 11.

THIRTEENTH.

And likewise excepts as to respondent's reason 12.

FOURTEENTH.

And likewise excepts as to respondent's reason 13.

FIFTEENTH.

And likewise excepts as to respondent's reason 14.

HULBERT & MECHEM,
Attorneys for respondent.

ASSIGNMENTS OF ERROR.

STATE OF MICHIGAN,
THE CIRCUIT COURT FOR THE COUNTY OF CALHOUN.

THE PEOPLE OF THE STATE OF MICHIGAN,
AGAINST
OREN J. FREY.

And now comes the above named respondent and upon the decision of the Circuit Judge in refusing the motion for a new trial, assigns error as follows:

FIRST.

Said Circuit Judge erred in not granting a new trial, because he had erred in submitting the facts to the jury as issuable fact for a jury.

SECOND.

Said Circuit Judge erred in not granting a new trial, because he had erred as matter of law, in charging the jury in substance, that it was sufficient to convict the respondent, if the jury found that respondent had threatened to accuse the complaining witness publicly of the commismission of the alleged offense.

THIRD.

Said Circuit Judge erred in not granting a new trial, because he had erred as matter of law, in not charging the jury that it was necessary, in order to convict the respondent, for the jury to find that respondent had threatened to set in motion the criminal law of the state against said complaining witness, and to accuse him, before some court of competent jurisdiction, or to the officers of the law having charge of the prosecution of offenses, with the commission of the alleged offense.

FOURTH.

The Circuit Judge erred in not granting a new trial, because he had erred as matter of law, in omitting in his charge to the jury, to tell the jury that it was an essential element of the crime with which respondent was charged, that the respondent should have threatened to use some of the preliminary means necessary to cause the complaining witness to be proceeded against for the offense named in this cause.

FIFTH.

The Circuit Judge erred in not granting a new trial, because he had erred as matter of law, in charging the jury when they returned into court for additional instructions that "If they believed Mr. Doubleday, believed his position to be true, that they came upon him there, said to him what he says they did say, why conviction would possibly follow, probably follow."

SIXTH.

The Circuit Judge erred in not granting a new trial, because he erred as matter of law, in charging the jury when they so returned into court, that "a reasonable doubt

must be a doubt that grows out of the case, a doubt which you have when you view the case in all its aspects, taking the testimony together, a doubt arising out of the case, in other words, considering the case as a whole."

SEVENTH.

The Circuit Judge erred in not granting a new trial, because he erred as matter of law, in charging the jury when they so returned into court, that "the presumption of innocence and the reasonable doubt attaches to every element of the offense, and if you size it all up, taking into view all the elements of the case, and you have a reasonable doubt, give him the benefit of it, and if you have not a reasonable doubt, and are satisfied beyond a reasonable doubt, then you would find a verdict of guilty."

EIGHTH.

The Circuit Judge erred in not granting a new trial, because he erred as matter of law, in charging the jury, when they returned under orders of the court later in the evening, as follows: "An obstinate man is not in his place on a jury, and I do not say that because a man may have a mind of his own he is obstinate, but it seems to me that this is a case for fair consultation among the jurors, and that there should be no trouble in coming to an agreement, for the reason that the issues are not complicated, nor are there many of them."

NINTH.

The Circuit Judge erred in not granting a new trial, in that he erred as matter of law in charging the jury in his manner of defining the offense of sodomy and bestiality, said offense being the one in relation to which the threats were averred to have been made by respondent, said definition not being a correct definition and

correct statement of the elements necessarily constituting that offense.

TENTH.

Said Circuit Judge erred in not granting a new trial, because of the obvious gross incompetency of the stenographer who reported the trial, to give a correct report of the charge of the case to the jury as shown by the radical difference between the charge as reported by said stenographer and the charge as re-written by the court three months thereafter, and the reliance of said court on his re-written charge instead of his official transcript of said stenographer, thus rendering respondent and his counsel unable to rely upon his transcript of the record as a record of the trial.

ELEVENTH.

The Circuit Judge erred in not granting a new trial because it appeared that the stenographer reporting the trial was not and is not able to give for the aid of court or counsel, or to assist respondent in removing the case to the Supreme Court, or in moving for a new trial before the trial court, any reliable or correct transcript of the minutes of said trial, and that because of the incompetency of said stenographer it is impossible to obtain a correct transcript of said trial, nor can the same be revised because of the want of a true record thereof.

TWELFTH.

The Circuit Judge erred in not granting a new trial because he erred, as a matter of law, in allowing the witnesses, Henry Thomas and M. J. Wood, who were respondents witnesses on good character to be asked, (the witness Thomas on cross-examination,) whether he ever knew of respondents attempting to commit suicide at

Athens; if he ever heard of it; what time it was; whether it occurred; whether it was generally understood and believed that such was the fact; whether he had heard of it from different sources; whether he had ever heard any denial of it, and the witness Wood, whether he did not know about the attempt at suicide, all of which was duly objected to and protested against on said trial.

Wherefore, for the errors aforesaid, said respondent prays the court that the decision of the trial court in refusing a new trial, may be reviewed, set aside, reversed and held for naught, and that the said respondent may be granted a new trial and be restored to all things he has lost by the said errors.

HULBERT & MECHEM,
Att'ys for Respondent.

THOS. E. BARKWORTH,
Of Counsel.

This bill of exceptions contains a substantial statement of all the proceedings and proofs, had on the trial of said cause, and the motion for a new trial, with the exceptions and assignments of error, on the denial of said motion, which are material or necesary to the consideration by the Supreme Court in reviewing the same, and because none of the foregoing matters or things appear of record in said cause, and the court being of the opinion that such exceptions are not frivolous, immaterial, or intended only for delay, has, at the request of counsel for defendant, on this 19th day of February, 1896, settled and signed this bill of exceptions.

CLEMENT SMITH,
Circuit Judge.

INFORMATION.

STATE OF MICHIGAN,

THE CIRCUIT COURT OF THE COUNTY OF CALHOUN.

OF THE SEPTEMBER TERM, IN THE YEAR 1895.

CALHOUN COUNTY, SS.

O. Scott Clark, Prosecuting Attorney for the County of Calhoun aforesaid, for and in behalf of the People of the State of Michigan, comes into said Court in the September term thereof, A. D. 1896, and gives it here to understand and be informed, that George Brot and Orin J. Frey, late of the Township of Athens, in the County of Calhoun and State of Michigan, heretofore, to-wit: on the Seventeenth day of June in the year one thousand eight hundred and ninety-five, at the Township of Athens in said Calhoun County, did verbally, unlawfully and maliciously threaten to accuse one Hiram M. Doubleday of a crime, to-wit: the the crime of sodomy and bestiality, with intent, then and there, to extort money from him, the said Hiram M. Doubleday.

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 Michigan.

O. SCOTT CLARK,
Prosecuting Attorney for the County of Calhoun.

INDEX.

166

16

STATE OF MICHIGAN,

SUPREME COURT.

THE PEOPLE,
vs.
ORIN J. FREY.

EXCEPTIONS FROM CALHOUN.

BRIEF FOR RESPONDENT.

HULBERT & MECHEM,
Attorneys for Respondent.

A. W. LOCKTON, *Pros. Atty.*
THE ATTORNEY GENERAL,
For the People.

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