

## New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY,  
Defendant in Error,

vs.

WILLIAM HEYER,  
Plaintiff in Error.

In Error.

### BRIEF OF PLAINTIFF IN ERROR.

The defendant in this cause, a young man, not overly blessed with brains, was charged on a complaint before Owen P. Mahon, a Police Justice in the City of Elizabeth, on a charge made by one Annie Atamuck, that he did assault her, and leading the Police Justice to believe that a rape had been committed. He was arrested and later committed to the County Jail and afterwards pleaded to an allegation and was sentenced to a term in the State Prison of not less than two years and not more than thirty years. After his sentence he sought counsel and through him the matter was brought to the attention of the Court. The contention of the State will be that having pleaded guilty that there is no power to set aside that conviction. The contention of the plaintiff in error is that he was not represented by counsel; that he is unacquainted with court procedure and that he should not have been permitted to plead to such a grave crime of which he is innocent, until he had had the benefit of advice of counsel. He also con-

tends that the Court before which he was arraigned should never have permitted him to plead to such a grave crime unattended and unadvised. That he had a right to believe from the allegation that he was pleading to an assault and battery. From the papers presented to this Court there is sufficient irregularity to permit this Court to set aside the proceedings and remit the cause back to the Union Special Sessions.

The complaint is as follows: That the said defendant on the twenty-sixth day of November, A. D. 1913, did feloniously and forcibly and against her will make an assault upon the body of her, the said Annie Atam~~ok~~, and her the said Annie Atam~~ok~~ did then and there feloniously ravish and carnally know.

He was arraigned before the said Police Justice and committed to the County Jail. After such commitment he signed an application on December 3, 1913, to be tried in the Court of Special Sessions in and for Union County. (See page 6 of printed book.)

On the fifth day of December following, the Prosecutor of the pleas made application to the Judge of the Court of Special Sessions for an immediate trial, but no order was made for the trial of the said defendant, and no order was signed for the holding of said Court of Special Sessions, although the application of the defendant seems to have been signed and the Prosecutor requested a trial. (See pages 6 and 7 of printed book.)

On the same fifth day of December, the Prosecutor of the Pleas prepared an allegation, as it is termed, setting out an alleged crime as follows: That the said William Heyer on the twenty-sixth day of November, in the year of our Lord 1913, at the City of Elizabeth, etc., then and there being, did feloniously and forcibly and against the will

of one Anna Starncuk, a woman, make an assault upon the body of her, the said Anna Starncuk, and did then and there feloniously ravish and carnally know her, the said Anna Starncuk, and other wrongs and injuries to her, the said Anna Starncuk, then and there did.

And on the same day, as it is stated in the return to the writ of error, before James C. Connolly, Judge of the Court of Common Pleas, constituting the Court of Special Sessions in and for said Union County, comes the said William Heyer, and being asked what manner he would acquit himself thereof, says he is guilty thereof, and before the said Judge of the Court of Common Pleas, constituting the Court of Special Sessions, not sitting as a Judge of the Court of Special Sessions, the said William Heyer was sentenced to be imprisoned in the State's Prison for a minimum term of two years and for a maximum term of thirty years at hard labor, and to pay the costs, etc. (See pages 9 and 10 of printed book.) The defendant must have pleaded to an indictment for assault and battery, because the allegation sets out that crime. It does not set out the crime of rape and therefore he couldn't have pleaded to that. He was sentenced for rape.

The defendant insists that his conviction was irregular for the reasons assigned by him. The defendant is a young man and was not represented by counsel, and the charge being of such a grave nature, if this Court thinks the charge is rape, the lower Court should not have permitted him to plead unless represented by counsel.

## I.

**The Court of Special Sessions was created by the act of 1898, page 866, and at paragraph 13 of said act is found the power to hold such Court.**

The contention of the defendant is, that no such Court was held to try him. It appears that all the proceedings were before the Judge of the Court of Common Pleas, and it also appears that no order was made by the Court to hold a session of the Special Sessions. An order was prepared but was not signed by the Judge as appears by the printed book on page 5 at line 37 of the printed book. This is a fatal error.

It appears also by the certificate of the County Clerk at page 12 of the printed book that there is no book of the Special Sessions Court, but that the proceedings are recorded in the Quarter Sessions Minutes.

The defendant contends that there is no valid conviction, nor is there any valid judgment.

An examination of the record as set out in the printed case reveals the fact that while the charge is made by one *Annie Atamask*, before one Owen P. Mahon, Police Justice, the complaint is signed by one *Anna Atamacuk*, and the charge in the complaint is that the defendant did feloniously and forcibly and against her will make an assault upon the body of *Annie Atamask*, and her, the said *Annie Atamask*, did then and there feloniously ravish and carnally know. There is no charge in the complaint as the law requires, that the defendant did feloniously ravish and carnally know the woman *against her will*. (See Laws of 1898, page 794, par. 115.)

Therefore the charge was an assault and battery and for this he was not tried.

The Prosecutor of the Pleas in his application for a trial sets out the charge in his allegation presented to the Court in the same language as the Police Justice, and the defendant in pleading should be considered as having pleaded to an allegation for assault and battery and the plea should not be considered as if rape had been charged. He was not represented by counsel in the case.

## II.

**The words of the statute were not followed and therefore the variance is fatal and no lawful conviction could be had.**

In Wharton's Criminal Practice and Pleading, 8th Edition, Sec. 220, the law is stated as follows: Where a statute prescribes or implies the form of the indictment, it is usually sufficient to describe the offence in the words of the statute, and for this purpose it is essential that those words should be used. In such case the defendant must be specially brought within all the material words of the statute; and nothing can be taken by intendment.

It is no more allowable, under a statutory charge to put the defendant on trial without specification of the offence than it would be under a common law charge.

A count in an indictment which charges two distinct offences is bad, and the defendant on a motion to quash or demurrer can defeat it.

Thus when to horse stealing and ordinary larceny different penalties are affixed, to join the two in one count is a good cause for arresting judgment.

*Wharton's Criminal Practice*, 8th Ed.,  
Sec. 243.

*State v. Nelson*, 8 N. H., 163.

It is a general rule that the special matter of the whole offence should be set forth in the indictment with such certainty that the offence may judicially appear to the Court. When special facts are an essential part of an offence, they must be set out.

*Wharton's Criminal Pleading & Practice*,  
Sec. 151.

*U. S. v. Cruikshank*, 92 U. S., 542.

*U. S. v. Simmons*, 96 U. S., 360.

### III.

**The safe and only course in an indictment for rape is to aver that it was committed forcibly, and against the will of the female, and therefore it would not be safe to omit the averment.**

*Wharton's Criminal Pleading & Practice*,  
Sec. 263.

Our statute requires the indictment to state that a person ~~who~~ shall have carnal knowledge of a woman ~~be~~ forcibly *against her will*. In the present case the words against her will do not follow the words ravish and carnally know.

In rape itself, of which an essential element is the want of consent of the woman, proof of consent necessarily, as has been seen, destroys one of the conditions of the offence. Hence there can be no assault with intent to commit a rape in cases where consent, by a person capable of consenting, is given.

In the case before this Court as the allegation does not state that carnal knowledge was had forcibly and *against her will*, the presumption follows that she must have consented, and if so, then there was no crime of rape.

Blackstone defines rape to be: "The carnal knowledge of a woman forcibly and against her will."

4 *Blackstone Com.*, 210.

See also

1 *Russell on Crimes*, 3d Ed., 675.

1 *Hawkins Pleas of the Crown*, p. 122, sec. 2.

The carnal knowledge "against her will" is what governs, and there is no such crime charged in the case before this Court.

The proper form of the indictment should have been in these words: "That William Heyer on, etc., at Elizabeth, etc., in and upon one Annie Atam~~ok~~ violently and feloniously did make an assault and her the said Annie Atam~~ok~~ then and there violently and *against her will* feloniously did ravish and carnally know against the peace, etc."

Any other form is fatal. An examination of all the great Criminal Writers, such as Bishop, Wharton, Russell, Archbold and Roscoe, discloses this fact.

There are other fatal defects in the allegation presented by the Prosecutor of the Pleas. One *Annie Atam~~ok~~* charges Heyer and *Anna Atama~~ok~~* signs the complaint; then the Prosecutor charges that the assault was committed on one *Annie Starn-cuk*, two entirely different persons.

## IV.

**Whenever a statute attaches to an offense certain technical predicates, these predicates must be used in the indictment.**

As a great constitutional right the accused has a right to demand the nature and cause of the accusation against him. Consequently the offence must be so described in the allegation in writing of the Prosecutor of the Pleas as to put the accused in possession of this constitutional right. That was not done in this case. See

*Wharton's Criminal Pleading & Practice,*  
8th Ed., Sec. 235.

The early history of the criminal law shows great strictness and technical formality in criminal pleading. Several of the States have criminal codes in which the criminal procedure is regulated almost exclusively. Those having no criminal code follow the common law subject to statutory modifications.

The description of the offence charged in an indictment ought to be competent to three purposes.

1. To the information of the defendant, that he may know what offence he is called upon to answer.

2. To the information of the Court, that it may see a definite offence on record to which to apply the judgment and the punishment which the law prescribes.

3. To the protection of the defendant against a further prosecution for the same offence.

An allegation, as it is called, and an indictment must state all the facts and circumstances that constitute the offence, with such certainty and precision that the defendant may know whether they

constitute an indictable offence, and how to plead and prepare for his defence, and that the judgment given on conviction may be manifest.

In an indictment under a statute, where the words are descriptive it should follow the language and expressly charge the described offence, so as to bring it within all the material words of the statute.

## V.

**No allegation of unlawfulness, nor any conclusions, will make the indictment good, if it does not bring the fact prohibited or commanded in the doing or not doing of which the offence consists within the material words of the statute.**

It is necessary that the defendant should be brought within all the material words of the statute, and nothing can be taken for intendment. And the general and well settled rule is to declare in the very words of the statute.

In the absence of statutory provisions it is an inflexible rule of law as well as the clear dictate of justice that no man shall be deprived of his rights either of person or property, without an opportunity of being heard.

It is not enough that the Court have jurisdiction of the subject matter, they must also have jurisdiction of the person. In every proceeding of a judicial nature it is essential that the person whose rights are to be affected should be a party to the proceeding, and have an opportunity of making defence.

*Hess v. Cole*, 3 Zab., p. 124, cited in 12 C. E. Green at p. 624.

See also

*State v. Newark*, 1 Dutch, foot p. 411.

See also in *Hooper & al.* ADS. *Chamberlain*, 5 Vroom at page 226, the Court said:

“Where it is necessary to show jurisdiction, the party must allege the existence of the facts on which jurisdiction depends, and the statute must be strictly pursued. There will be no intendment and presumption in favor of persons and tribunals exercising a special and statutory authority.”

So also the Court in *Russell v. Work*, 6 Vroom at page 319, said:

“A tribunal clothed with capacities and privileges such as these, is not to be likened to what were known as inferior courts at common law—some of which were not even courts of record. The judgments of such courts were not deemed conclusive—and that the judgment of a county court is not conclusive, but the existence of the facts necessary to the regularity of such judgment is a question for a jury.”

There is so much irregularity in the whole proceedings that this Court should set aside the judgment so that the defendant may have his case properly presented.

Respectfully submitted,

WILLIAM R. WILSON,  
Attorney of Plaintiff in Error.

[6847]

83/

## New Jersey Court of Errors and Appeals

THE STATE OF NEW JERSEY, <i>Defendant in Error,</i> <i>vs.</i> WILLIAM HEYER, <i>Plaintiff in Error.</i>	}	<i>In Error</i>	10
----------------------------------------------------------------------------------------------------------------------	---	-----------------	----

### BRIEF OF DEFENDANT IN ERROR.

On the twenty-sixth day of November, Nineteen thirteen, the defendant was charged before the Police Justice of the City of Elizabeth with the crime of rape, to which complaint he pleaded guilty (Case, page 3). 20

On the third day of December, Nineteen thirteen, the defendant made application to the Prosecutor (waiving indictment and trial by jury) to be tried before the Court of Special Sessions (Case, page 4), which application was approved by the Prosecutor (Case, page 5).

On the ninth day of December, Nineteen thirteen, the Prosecutor presented to the Union County Court of Special Sessions an accusation, in writing, against the defendant, charging him with the crime of rape (Case, page 6). On the day last mentioned the defendant appeared before the Court of Special Sessions and pleaded "guilty" to such accusation (Case, page 7). 30

There was no trial of this case, the defendant pleading guilty when arraigned. There is no bill of exceptions returned with this writ of error and consequently the only assignments of error which 40

can be considered are those which indicate error appearing upon the face of the record. The other assignments of error have nothing to sustain them.

*Robins vs. Vandebeck*, 26 Vr. 364.

*Conrad vs. Broker*, 41 Vr. 823.

*Crowsby vs. Wells*, 43 Vr. 803.

10 The third, fourth and fourteenth assignments of error that there is no valid conviction or judgment is unfounded in fact inasmuch as the record of the Court (Case, page 7) shows that the defendant when accused of the crime of rape in the Court of Special Sessions pleaded "guilty"; and that afterwards the Court of Special Sessions imposed judgment.

20 The fifth, sixth, tenth and eleventh assignments of error rest upon the fact that the complaint made before the Police Justice and the written accusation of the prosecutor do not charge the crime of rape. This contention is unfounded in fact. The crime is set forth in the language of the statute as amended (P. L. 1910, page 271). The crime is set forth with all the reasonable certainty to render the offense judicially apparent.

*State vs. Haase*, 24 Vr. page 28.

30 There is no question but what the crime is charged with a clearness and certainty sufficient for identification to enable the accused to meet the charge intelligently and to enable him to plead a conviction in bar of any subsequent proceedings.

The seventh assignment of error is because the conviction and judgment were found in the Quarter Sessions instead of the Special Sessions. This is not borne out by the record (Case, pages 7 and 12).

40 The eighth and ninth assignments of error are because no order was signed by the Judge sitting in Special Sessions directing a trial to be had for

the said offense.

It was not necessary for the Court to make a written order, as contended by the plaintiff in error (See Crimes Act P. L., 1898, page 870, section 13). The written order referred to by the plaintiff in error and printed in the state of the case is a matter of form, rather than of legal necessity under the statute.

The record in this case (Case, page 7) shows that the defendant pleaded guilty before and was sentenced by the Court of Special Sessions. 10

The twelfth and thirteenth assignments of error are directed at the spelling of the complainant's name.

It appears that in the body of the complaint, made before the Police Justice, the name of the complaining witness is mentioned as "Annie Atamuck" and signed "Anna Atamauck" (Case, page 3). It also appears that the defendant in his application, requesting this matter to be disposed of before the Court of Special Sessions, referring to the same complaint of rape mentions the complaining witness as "Annie Stanack." The Prosecutor's accusation (Case, page 8) in the Court of Special Sessions, referring to the same complaint and to the defendant's application mentions the complaining witness as "Anna Starncuk," who is the same and identical person mentioned in the other proceedings in this matter and upon whom the rape was committed by the defendant. **There is no contention to the contrary by the defendant.** The defendant's contention seems to deal absolutely with the spelling of the name of the complaining witness. These are errors which can be amended. It is also to be noted in connection with this assignment of error that the defendant without objection pleaded "guilty" to the accusation. 20 30

It is, therefore, respectfully submitted that the judgment of the Union County Special Sessions be affirmed.

Yours truly,

MARTIN P. O'CONNOR,

*Assistant Prosecutor of the Pleas,  
Attorney and of Counsel for Defendant in Error.*

10

20

30

40

4

## INDEX.

	PAGE
Writ of Error.....	1
Answer .....	2
Complaint .....	3
Application and Order.....	4
Allegation for Rape.....	6
Judgment .....	7
Assignments of Error.....	8
Order .....	11
Certification .....	12
Writ of Error.....	1a
Answer .....	2a
Assignments of Error.....	3a
Judgment of Affirmance.....	6a

## Writ

NEW JERSEY, ss.:

10



The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature.  
GREETING:

20

Because in the record and proceedings and also in the giving of judgment in a certain plaint which was in our said Supreme Court of Judicature before you, between the State of New Jersey, defendant in error, and William Heyer, plaintiff in error, upon a certain allegation in writing and the count therein against said William Heyer, for rape. *Pro ut* the said allegation in writing and counts therein, as it is said, manifest error hath intervened to the great damage of the said plaintiff in error, as by his complaint we are informed, we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command

30 you, that if judgment be thereupon given and affirmed then you distinctly and openly send under your seal the record and proceedings and plaint aforesaid, with all things touching and concerning the same, to our Judges of our Court of Errors and Appeals in the last resort in all cases at Trenton on the Thirtieth day of July, 1915, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be done thereupon, for correcting that error what of right

40 and according to the law and custom of the State of New Jersey ought to be done.

*Answer*

Witness our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the Twelfth day of July, A. D., Nineteen Hundred and Fifteen.

THOMAS F. MARTIN,

10

WILLIAM R. WILSON,  
Attorney.

Clerk.

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State in a certain schedule to this writ annexed. 20

30

40

**Assignments of Error**NEW JERSEY COURT OF ERRORS AND  
APPEALS.

10	THE STATE OF NEW JERSEY, Defendant in Error,  vs.  WILLIAM HEYER, Plaintiff in Error.	In Error. Assignments of Error.
----	---------------------------------------------------------------------------------------------------------	---------------------------------------

20 Afterwards, to wit &c., before the Judges of the said Court of Errors and Appeals, in the last resort in all causes at Trneton, comes the said plaintiff in error by William R. Wilson, his attorney, and says, that in the record and proceedings aforesaid and also in the matters and things recited and contained in his assignments of error before the Supreme Court of Judicature of the State of New Jersey, as well as in the matters and things in the record of the proceedings of the trial specified by him; judgment was given in said Supreme Court for the Union County Quarter Sessions against the said plaintiff in error in the following respects, to wit:

30 1. That the said judgment aforesaid was given against the said William Heyer, whereas by the law of the land, judgment should have been given for him.

40 2. That the entire proceedings as a whole do not show beyond a reasonable doubt that the said plaintiff in error is guilty of the crime charged, and does not justify the conviction found against him.

*Assignments of Error*

3. That there is no valid conviction against him.
4. That there is no valid judgment against him.
5. That the complaint made against him before Police Justice Mahon, did not charge the crime of rape. 10
6. That the allegation or accusation in writing of the Prosecutor of the Pleas set out in the return to the writ of error in this case, and on which the alleged conviction and judgment is based, does not legally set out the crime of rape.
7. That the said conviction and judgment were found in the Quarter Sessions instead of the Special Sessions. 20
8. That there is no order signed by the Judge sitting in Special Sessions, directing a trial to be had for the said offence.
9. That there is no order signed by the Judge of the Court of Common Pleas sitting as Judge of the Court of Quarter Sessions directing that a Court of Special Sessions be held for the trial of the said plaintiff in error. 30
10. That the said complaint on which said allegation or accusation in writing of the Prosecutor of the Pleas is based does not state that the plaintiff in error did feloniously ravish and carnally know the complainant against her will.
11. That the said allegation or accusation in writing of the Prosecutor of the Pleas alleging the nature of the offence with which the plaintiff in error is charged, does not legally charge the crime 40

*Assignments of Error*

of rape for which the said plaintiff in error was convicted and sentenced.

10        12. That the complaint in writing made before Owen P. Mahon, Police Justice of the City of Elizabeth, is alleged to be made by one Annie Atamacuk.

13. That the allegation or accusation in writing of the Prosecutor of the Pleas alleges that the said plaintiff in error did ravish and carnally know one Anna Starncuk.

14. That the record of the Court does not show any conviction or judgment in the Union County Special Sessions.

20        15. That said proceedings are in other respects irregular, unjust and oppressive to the said plaintiff in error.

WILLIAM R. WILSON,  
Attorney for Plaintiff in Error  
and of Counsel.

Common joinder in error filed.

30

40

**Judgment of Affirmance**

NEW JERSEY SUPREME COURT,

FEBRUARY TERM, 1915.

THE STATE OF NEW JERSEY,

VS.

WILLIAM HEYER.

10

Submitted March 18, 1915. Decided June 4, 1915.

On Writ of Error.

Before Justices Trenchard, Bergen and Black.

20

For the Plaintiff in Error, William R. Wilson.

For the State, Alfred A. Stein.

*Per Curiam.*

The return to this writ of error discloses that the defendant was charged before the police justice of the City of Elizabeth with the crime of rape, to which complaint he pleaded guilty; that subsequently he made application to be tried before the Court of Special Sessions of Union County and waived indictment and trial by jury; that subsequently the Prosecutor of the Pleas presented to said Court of Special Sessions an accusation in writing charging the defendant with the crime of rape, and that the defendant appeared in that Court and pleaded guilty to the accusation presented by the Prosecutor of the Pleas and that subsequently the Court imposed a sentence.

30

40

*Judgment of Affirmance*

So far as the return shows no objection was made by the defendant during the entire course of such proceedings. The result is that no exceptions are presented by the record, and there is nothing for us to consider except such assignments of error as purport to be based upon objections appearing upon the face of the record. Such of these as are argued may be disposed of as follows:

10

(1) We think it quite immaterial, if true, that no order was made by the Judge for the trial of the defendant.

20

(2) The contention that the trial was in the Court of Common Pleas and not in the Special Sessions is not borne out by the record.

(3) The fact that the minutes of the Special Sessions were kept in the same book as those of the Quarter Sessions is of no consequence.

30

(4) The argument based upon the contention that there was no allegation in the complaint before the magistrate, and in the accusation preferred by the Prosecutor of the Pleas that the assault was "against her will" is unfounded in fact.

The judgment will be affirmed, with costs.

## Writ of Error.

NEW JERSEY, SS.:



The State of New Jersey to James C. Connolly, Esquire, Judge of the Court of Special Sessions of Union County, Greeting:

Because in the record and proceedings and also in the giving of judgment upon a certain allegation or accusation in writing against William Heyer late of the City of Elizabeth, in the County of Union for rape, Prout the said allegation and the count therein, whereof he hath been charged, and is therefore before you convicted by the said Court, taken between the said State of New Jersey, and the said William Heyer, as it is said, manifest error hath intervened to the great damage of the said William Heyer, as from his complaint, we have received information, we being willing in his behalf to correct the error in due manner, if any there shall be and that speedy justice be done unto him, the said William Heyer, command you that if judgment be therein given, then what you distinctly and openly send under your seal the record and proceedings aforesaid with all things touching the same, to our Supreme Court of Judicature to be held at the City of Trenton, on the eleventh day of February next, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error what of right and according to the laws and customs of New Jersey ought to be done.

Witness WILLIAM S. GUMMERE, Chief Justice of our Supreme Court at Trenton, this twenty-third day of January, A. D. nineteen hundred and fourteen.

WM. C. GEBHARDT,  
Clerk.

WILLIAM R. WILSON,  
Attorney.

10

20

30

40

**Answer.**

The answer of JAMES C. CONNOLLY, Esquire,  
Judge of the Court of Special Sessions, in and for  
the County of Union.

10 The record and proceedings of the plaint whereof  
mention is made within, with all things touching  
and concerning the same to the Justices of our Su-  
preme Court of Judicature of the State of New  
Jersey, at Trenton, at the day and year within con-  
tained, I, the Judge of the Court of Special Sessions  
within mentioned, under my seal, in a certain  
schedule to this writ annexed, certify and send, as  
I am commanded.

20 JAMES C. CONNOLLY, (Seal).  
Judge of the Court of Special Sessions.

The execution of this writ appears by the sched-  
ule hereto annexed.

30 (Seal) In Testimony Whereof, I, JAMES C.  
Calvert, Clerk of the Court of Special  
Sessions, in and for the County of  
Union, have hereunto subscribed my  
name, and affixed the seal of said  
Court, the ninth day of February,  
A. D. 1914.

JAMES C. CALVERT,  
Clerk.

**Complaint.**

STATE OF NEW JERSEY, }  
 COUNTY OF UNION, } ss.:

ANNIE ATAMCUK, of the City of Elizabeth, in the County of Union and State of New Jersey, upon her complains that on the twenty-sixth day of November, A. D., 1913, at the City of Elizabeth, in the County aforesaid: 10

William Heyer, did feloniously and forcibly and against her will make an assault upon the body of her the said Annie Atamcuk, and her the said Annie Atamcuk, did then and there feloniously ravish and carnally know. And, therefore, he prays that the said William Heyer, 951 Elizabeth Ave., may be apprehended and held to answer to said complaint, and be dealt with as law and justice may require. 20

ANNA ATAMACUK,  
 1161 Wash. St.

Sworn and subscribed 26th }  
 November, 1913, before me. }

OWEN P. MAHON,  
 Police Justice. 30

Warned by Court. Pleads guilty. November 26, 1913. Happens 8 and 9 A. M. Reported to Judge at 10 A. M.

**Application and Order.**

*To Alfred A. Stein, Prosecutor of the Pleas in and  
for the County of Union, and State of New Jer-  
sey:*

10       Whereas, I WILLIAM HEYER was lately charged  
upon oath, by Annie Stanack before Owen P.  
Mahon Esquire, one of the Justices of the Peace in  
and for the City of Elizabeth, in the said County of  
Union, with the offense of Rape which offense is  
triable by law, before the Court of Quarter Ses-  
sions of said County, and whereas, I desire to be  
tried immediately before the Court of Special Ses-  
sions in and for said county.

20       Now therefore, by virtue of the act entitled "An  
act relating to courts having criminal jurisdiction  
and regulating proceeding in criminal cases" (Re-  
vision 1898), approved June 14, 1898, I do hereby  
waive indictment for said offense, and upon said  
charge, and do also waive trial by jury thereon and  
request to be tried immediately before the said  
Court of Special Sessions in the manner, and form  
provided for by said act.

Dated at Elizabeth, in said County of Union,  
the 3d day of December, A. D., 1913.

30

WILLIAM HEYER.

My plea is.....

Signed and delivered }  
in presence of        }  
CHARLES W. DODD.

40

*Application and Order*

*To James C. Connolly, Esquire, Judge of the Court of Special Sessions, in and for said County of Union:*

Being of opinion that the public interest will not be benefitted by denying the above request, I respectfully apply to your Honor (in case you agree with me in such opinion) for the immediate trial of the person so requesting, according to the provisions of the act above specified. 10

Dated at Elizabeth, in said County, the 5th day day of December, A. D., 1913.

ALFRED A. STEIN,  
Prosecutor of the Pleas  
for the said County of  
Union.

UNION COUNTY, SS.:

I, JAMES C. CONNOLLY, Judge of the Court of the Common Pleas and of the Court of Special Sessions in and for the said County of Union, being of opinion that the public interest will not be benefitted by denying the foregoing request, do hereby grant the above application, and do hereby order a session of said Court of Special Sessions to be held for the trial of the person making such request, upon said charge and for said offense, which Court is hereby called to meet at the Court House in the City of Elizabeth, in the County of Union on the fifth day of December, A. D., 1913. 30

Let a *capias* issue for the said defendant and *mesne* process for witnesses for the State and for the defendant.

Witness my hand, this 5th day of December, A. D., 1913.

Judge of the Union Common  
Pleas and Court of Special  
Sessions. 10

**Allegation for Rape.**  
 COURT OF SPECIAL SESSIONS,  
 UNION COUNTY.

	THE STATE  vs.  WILLIAM HEYER.	Allegation for Rape.
10		

STATE OF NEW JERSEY, UNION COUNTY, ss.:

WILLIAM HEYER, having been charged upon oath, before Owen P. Mahon, Esquire, a Police Justice in the said County of Union, with rape and having in writing, by himself, addressed to the Prosecutor of the Pleas of said County, waived indictment and trial by jury, and requested to be tried immediately upon said charge, under and by virtue of the provisions of the statute in such made made and provided, and said request having been duly granted, the Prosecutor of the Pleas of said County of Union, alleges thatt he said William Heyer on the twenty-sixth day of November, in the year of our Lord nineteen hundred and thirteen, at the City of Elizabeth, in the County aforesaid, and within the jurisdiction of this Court, then and there being, did feloniously and forcibly and against the will of one Anna Starneuk, a woman, make an assault upon the body of her the said Anna Starneuk, and did then and there feloniously ravish and carnally know her the said Anna Starneuk, and other wrongs and injuries to her the said Anna Starneuk then and there did, contrary to the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

Dated, the 5th day of December, nineteen hundred and thirteen.

ALFRED A. STEIN,  
 Prosecútor of the Pleas.

### Judgment.

That on the day and year last aforesaid, to-wit: the fifth day of December, in the year one thousand nine hundred and thirteen, before Hon. James C. Connolly, Judge of the Court of Common Pleas, constituting the Court of Special Sessions in and for said County of Union, according to the form of the statute in such case made and provided, comes the said William Heyer in his own proper person, and now here, touching the premises in the said allegation above specified and charged upon him, being asked in what manner he would acquit himself thereof, says he is guilty thereof.

10

And afterwards, that is to say at a Court of Special Sessions, holden at Elizabeth aforesaid, in the County aforesaid on Friday, the ninth day of January, in the year of our Lord one thousand nine hundred and fourteen, before Hon. James C. Connolly, Judge of the Court of Common Pleas, constituting the Court of Special Sessions in and for said County of Union, according to the form of the statute in such case made and provided. The said William Heyer being set to the Bar, Alfred A. Stein, Esquire, who prosecutes for the State in this behalf, moves for judgment on the said William Heyer.

20

Whereupon all and singular the premises being seen and by the Court now here fully understood, it is ordered and adjudged that the said William Heyer, having been convicted of the crime of Rape, be imprisoned in the State Prison of this State for a minimum term of two (2) years and for a maximum term of thirty (30) years, at hard labor upon this conviction; that he pay the cost of this prosecution, which costs are taxed by the Court at the sum of twenty-two dollars and forty cents (\$22.40), and that he be further imprisoned from and after

30

40



*Assignments of Error*

3. That there is no valid conviction against him.
4. That there is no valid judgment against him.
5. That the complaint made against him before Police Justice Mahon, did not charge the crime of rape. 10
6. That the allegation or accusation in writing of the Prosecutor of the Pleas set out in the return to the writ of error in this case, and on which the alleged conviction and judgment is based, does not legally set out the crime of rape.
7. That the said conviction and judgment were found in the Quarter Sessions instead of the Special Sessions. 20
8. That there is no order signed by the Judge sitting in Special Sessions, directing a trial to be had for the said offence.
9. That there is no order signed by the Judge of the Court of Common Pleas sitting as Judge of the Court of Quarter Sessions directing that a Court of Special Sessions be held for the trial of the said plaintiff in error. 30
10. That the said complaint on which said allegation or accusation in writing of the Prosecutor of the Pleas is based, does not state that the plaintiff in error did feloniously ravish and carnally know the complainant against her will.
11. That the said allegation or accusation in writing of the Prosecutor of the Pleas alleging the nature of the offence with which the plaintiff in 10

*Assignments of Error*

error is charged, does not legally charge the crime of rape for which the said plaintiff in error was convicted and sentenced.

10 12. That the complaint in writing made before Owen P. Mahon, Police Justice of the City of Elizabeth, is alleged to be made by one Annie Atamacuk.

13. That the allegation or accusation in writing of the Prosecutor of the Pleas alleges that the said plaintiff in error did ravish and carnally know one Anna Starncuk.

20 14. That the record of the Court does not show any conviction or judgment in the Union County Special Sessions.

15. That said proceedings are in other respects irregular, unjust and oppressive to the said plaintiff in error.

WILLIAM R. WILSON,  
Attorney for Plaintiff in Error and of Counsel.

30

40

**Order**

## NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,  
Defendant in Error,

vs.

WILLIAM HEYER,  
Plaintiff in Error,

In Error.

10

This matter coming on to be heard pursuant to notice and the said Court having considered the same,

It is on this second day of June, A. D., nineteen hundred and fourteen, Ordered that the Clerk of Union County do further return to this Court whether there is a book of minutes designated as Minutes of the Court of Special Sessions of Union County now in use in said County, and further whether the record returned with the writ of error heretofore issued out of this Court was taken from such book or not, and if not from such book then from what book.

20

30

Entered June 2, 1914.

On motion of

WM. R. WILSON,  
Attorney.

A true Copy,

WM. C. GEBHARDT,  
Clerk.

40

*Certification*

10 In obedience to the command of this order to me,  
JAMES C. CALVERT, Clerk of the County of Union,  
directed, I do hereby certify and return to the Su-  
preme Court, at Trenton, as follows: there is no  
book in use in Union designated as minutes of the  
Court of Special Sessions. There is a book in use  
designated Minutes, Quarter Sessions, Union Coun-  
ty, in which are kept the minutes of both the Quar-  
ter Sessions and Special Sessions Court, and it was  
from this last designated book that the record re-  
turned with the Writ of Certiorari heretofore is-  
sued out of the Supreme Court was taken.

20 L. S. Witness my hand and official seal  
this Nineteenth day of October, A. D.,  
1914.

JAMES C. CALVERT,  
County Clerk.

30

[4576]

40



