

To the Hon Mark Bird Judge of the
Circuit Court of Rockingham. —

The Petition of
Moses Joseph & John C. Joseph of
said County respectfully sheweth to the
Court that your Petitioners are aggrieved
by a final judgment of the County Court
of Rockingham County pronounced on the
21st day of March 1878 in the case of
the Commonwealth against Moses Joseph
& Margaret Perin on an indictment for
Lewd & Lascivious Cohabitation then pending
in said Court. —

A transcript of the Record of the
said judgment and proceedings in said
Court is herewith presented you which
it will appear that the case is
as follows: —

That Moses Joseph & Margaret Perin
were indicted in July 1877 on the testimony
of James C. Kelly & James H. Lorman members
of the Grand Jury. —

That the case was tried at the ^{Term} ~~March~~
Term 1878 after a motion to quash the
indictment had been overruled. — that a bench
for \$50. was found — which was set aside by
the Court. —

The case was tried again at the March

Jan 1878 & the jury brought in a
verdict in these words: "We the jury find the
Defendant guilty - ~~and~~ as charged in the indictment
and fix the fine at Fifty-dollars." - The Court
thereupon instructed the jury to return & find a
joint verdict against both Defendants - The
jury returned & returned with a $\$2^d$ verdict
as follows: "We the jury find the Defendants
guilty ~~and~~ as charged in the indictment and
fix their fine at Fifty-dollars each." -

Thereupon the Court instructed the jury to
again return & find a separate verdict
against each Defendant. -

The Defendants by Counsel were consenting
to any of these instructions.

The jury again returned & found a verdict
of fixing the fine at \$100. - Per 2^d
Bill of Exceptions. -

Counsel for Defendants moved for a
new trial & also made a motion in
arrest of judgment both of which were
overruled & exceptions taken. -

~~The~~ Judgment was then entered against
both Defendants for \$100. fine & costs. -

And the Court ordered that Deft. Jones
be imprisoned until the fine was
paid - & thereupon he moved the Court to
allow him to give security for the fine & costs

and he did so, with your Petitioner John C. Joseph
as security - and James Joseph was discharged
your custody - And thereupon at the
same term of the Court & without any
warning or notice judgment was entered
against James Joseph & John C. Joseph for
said fine & costs & directing execution to issue
which has been done -

Your Petitioner avers as ground of
error for which said judgment should be
reversed. -

1st - That there was no sufficient evidence
in the Case to convict said Defendants
of the charge against them - and the Court erred
^{in refusing to set aside the verdict}

2nd - That the Court erred in giving the
jury the instruction in regard to finding a
joint verdict - and the instructions were
calculated to mislead & did mislead the
jury - It cannot be possible that the law
intended to make one party responsible for the
guilt of another - nor to say that there
may not be different degrees of guilt. -
A young & ignorant or half witted woman certainly
ought not to receive the same degree of
punishment as man of vigorous mind & strong
will who has taken her to live with him
perhaps as a servant - but forces her to live with him
mistake & yet you must convict both or

let the man go free. — Instances might be
multiplied to show the fallacy of such a prop-
osition. —

3^d The Indictment ought to have been granted
if being insufficient. —

4th The Court had no right to hold the
Defendant Moses Joseph responsible for
the whole fine & costs & let the other
Defendants go free — by making the
order committing him to jail until fine
& costs were paid. The order ought to
have embraced both — if it was proper
at all — but was it proper at all? —

5th The Court had no right to render
judgment against John Petitioner John C.
Joseph at the same time that he
went second. — It said Moses Joseph. —
and entering motion to set aside.
Nor then & other errors apparent in the
record John Petitioner's jury a writ of error
to read judgment. —

W B Campbell Counsel

Moses Joseph
John C. Joseph
of Counsel

J. W. B. Campbell an acting practicing
in the Circuit Court of Rockingham
County Virginia respectfully certifies

that in my opinion that there
are errors in the judgment complained
of in the foregoing Petition for which
the same should be reversed & set aside
and under my hand this 19-
August 1878.

W. B. Compton

Mrs Joseph D

Petition
for writ of
error

Comme weath

To the Clerk of the Circuit
Court of Rockingham
County

Writ of error awarded,
which shall operate
as a superseder to the
judgment complained
of, in the within petition

Aug. 22. 1878

Mark Bird

Judge of the 18th
Judicial Circuit

Com. in Ray & wife 10th Cases 252
1 Call p 555. - 8. note 699-

THE COMMONWEALTH OF VIRGINIA,

TO THE SHERIFF OF ROCKINGHAM COUNTY—GREETING:

We command you, that from all further proceedings on a *judgment of the County Court of Rockingham County, rendered on the 19th day of March 1878, as an Indictment then therein pending in the name of the Commonwealth of Virginia vs Moses Joseph and Margaret Piner, said judgment being for the amount of a fine imposed upon said parties by said County Court, viz \$100* together with the cost of said proceeding you altogether supersede, which *Judgment* before the Judge of our Circuit Court of Rockingham County, at the Court-House thereof, for cause of error in the same to be corrected, on the petition of the said *Moses Joseph &c*

we have caused to come. We also command you that you give notice to the said *Commonwealth of Virginia*

that *she* be before the Judge of our said Circuit Court, at the Court House aforesaid, on the first day of *the October* term — next, then and there to have a rehearing of the whole matter in the *Judgment* aforesaid contained. And have then there this writ. Witness, JOSEPH H. SHUE, Clerk of our said Circuit Court, at the Court House, this *16th* day of *September* 1878, and in the *103rd* year of the Commonwealth.

J. H. Shue Clerk

Executed September 17th 1878 upon
L. G. Grattan atty. for Commonwealth & R. B.
Rakewell J. R. C. by delivering to each in per-
son a copy of the authentic supersedeas.

W. L. P. Dear H. L. J. S.
R. B. Rakewell J. R. C.

Moses Joseph &c
Sum^m
} Supersedeas
The Commonwealth of Va.
w. s. b.

and Tax paid

May term 1881

Inded

1st day October term
1878

Virginia:

Pleas before the County Court of Rockingham County
at the Court-house thereof on the 21st day of March 1878
Commonwealth.

Upon an Indictment for
Moses Joseph & Margaret Prier Lewd and Lascivious Cohabitation.
Be it remembered, that the Grand Jurors impaneled
and sworn in the County Court of Rockingham County
at the Term thereof, commencing on the 16th day of July
1878, in and for the body of Said County, and attending
Said Court, found an Indictment against the Defendants
Moses Joseph & Margaret Prier, for Lewd & Lascivious Cohabitation
which with the endorsement thereon by the foreman, is as
follows. Viz:—

Indictment.

State of Virginia

Rockingham County to wit:—

In the County Court of the Said County

The Jurors of the Commonwealth of Virginia in and for
the body of the County of Rockingham, and now attending
the County Court of the Said County, upon their oath pre-
sent that Moses Joseph and Margaret Prier on the
day of January, 1877, and from that day to the day
of June 1877, in the County aforesaid, did lewdly and
lasciviously associate and Co-habit together. the Said
Moses Joseph and the Said Margaret Prier being white
persons and not married to each other during all the
time aforesaid, against the peace and dignity of the

Commonwealth of Virginia.

This Indictment is found on the testimony of James L. Hettzel, and James S. Lowman, two of the members of the Grand Jury

Endorsement.

Commonwealth @ Moses Joseph & Margaret Prier. Indictment for Lewd and Lascivious Cohabitation. A true bill of L. Libert Foreman.

And at another day to-wit:-

(288) At a County Court continued and held in and for the County of Rockingham, at the Court House thereof on Wednesday, Sept 12, 1877.

Commonwealth.

@ Upon an Indictment for lewd and
Moses Joseph & Margaret Prier lascivious Cohabitation.

This day came as well the Attorney for the Commonwealth as the Defendants by Counsel, who filed their plea of not guilty and thereupon the trial of the cause was continued.

And at another day to-wit:-

At a County Court continued and held in and for the County of Rockingham, at the Court House thereof on Thursday January 3^d 1878.

Commonwealth.

@ Upon an Indictment for lewd
Moses Joseph & Margaret Prier and lascivious Cohabitation

This day came as well the Attorney for the Commonwealth as the Defendants by Counsel, and for reasons

appearing to the Court the trial of this Cause is continued until the first day of the next term.

And at another day to-wit:-

At a County Court continued and held in and for the County of Rockingham, at the Court-House thereof on Wednesday February 20th 1878 Commonwealth.

② Upon an Indictment for lewd and
Moses Joseph Margaret Prier. Lascivious Co-habitation

This day came again as well the Attorney for the Commonwealth as the Defendants by Counsel, and thereupon the Defendants by Counsel withdrew their plea of not guilty and moved the Court to quash the said indictment on consideration of which the Court overruled said motion to quash. The defendants then filed their plea of not guilty and thereupon came the following jury to-wit:- James Steele, D. G. May, Chas. G. Skinner, George Logan, D. R. Cromer, M. E. Lamer, A. H. Brewer, John Huddleson, Wm. H. Stinespring Philip Eastman, Edward D. Cole and Lewis P. Att. who being elected tried and sworn, well and truly to try the issue joined and the truth in and upon the premises to speak, and having fully heard the evidence and argument of Counsel retired to their room to consider their verdict, and after sometime returned into Court, and upon their oaths do say "we the jury find the defendants Moses Joseph and Margaret Prier guilty in the manner and form as charged in the indictment and assess their fine at fifty dollars Chas. G. Skinner Foreman.

And at another day to-wit:

At a County Court continued and held in and for the
County of Rockingham, at the Court-house thereof on
Thursday February 21st 1878

Commonwealth.

② Upon an Indictment for lewd
Moses Joseph & Margaret Prier and lascivious co-habitation

This day came again as well the Attorney for the
Commonwealth as the Defendants by Counsel, and thereupon
the defendants by Counsel moved the Court to set aside
the verdict of the jury and grant them a new trial,
which motion on consideration the Court doth sustain.
It is therefore considered by the Court that the verdict
of the jury be set aside and a new trial awarded
them, and the Court doth fix upon Monday next
Febry 25, 1878 as the day for the further trial of this cause
And at another day to-wit:-

At a County Court continued and held in and for the
County of Rockingham, at the Court-house thereof on Monday
February 25, 1878.

Commonwealth.

② Upon an Indictment for lewd and
Moses Joseph & Margaret Prier Lascivious co-habitation

This day came again as well the Attorney for the
Commonwealth as the Defendant by Counsel and on motion
of the Defendants by Counsel and for reasons appearing
to the Court the trial of this cause is continued until
the first day of the next term.

And at another day to-wit:-

At a County Court continued and held in and for the
County of Rockingham at the Court-house thereof on Tuesday
March 19th 1878.

Commonwealth.

② Upon an Indictment for lewd
Moses Joseph + Margaret Piner and lascivious Cohabitation.

This day came again as well the Attorney for the
Commonwealth. as the Defendant Moses Joseph in person
and by Counsel and the defendant Margaret Piner by
Counsel and thereupon came the following jury, to-wit:-
James R. Eiler, Joseph N. Manzy, John D. Keatwole, Emanuel
Dinner, Marvin Long, E. M. Schaeffer, John S. Effinger, Alvin H.
Peterson, Jacob Lineweaver, A. M. Peale, J. D. Kibler, and John
B. Hamsberger, who being elected tried and sworn well
and truly to try the issue joined and the truth in
and upon the premises to speak and having fully
heard the evidence and argument of Counsel retired
to their room to consider their verdict and after some
time returned into Court and upon their oaths do say
"That the jury find the defendants Moses Joseph and Margaret
Piner guilty in the manner + form as charged in the
indictment and assess their fine at One Hundred
Dollars John S. Effinger Foreman.

It is therefore considered by the Court that the
Commonwealth of Virginia recover of the Defendants Moses
Joseph + Margaret Piner the Sum of One Hundred Dollars
the amount of fine by the jurors in their verdict ascer

tained and her costs by her in this behalf expended. And the Defendant Moses Joseph being present in Court it is ordered that he be imprisoned until he shall pay the said fine and costs or ~~he~~ he otherwise discharged according to law, and thereupon he was placed in custody of the Sheriff of this County. and thereupon said Moses Joseph moved the Court to allow him to give Security for the said fine and costs which motion the Court on consideration doth sustain and thereupon John C. Joseph appeared in Court who justified as to his sufficiency) waiving the benefit of his Homestead Exemption and acknowledged himself as Security for the said Moses Joseph for the payment of said fine & costs. and thereupon the said Moses Joseph was discharged from custody. It is therefore considered by the Court. that. The Commonwealth do recover of the said Moses Joseph & John C. Joseph the said fine & costs and that execution do issue therefor against them. And now at this day to wit.

At a County Court continued and held in and for the County of Rockingham at the Court House thereof, on Thursday March 21st 1878
Commonwealth.

② Upon an Indictment for Lewd
Moses Joseph & Margaret Oliver & Lascivious Cohabitation

This day came again the Attorney for the Commonwealth and the Defendants by their Attorney and the Defendants by Counsel moved the Court to set aside

the verdict and grant them a new trial which motion the Court doth overrule, and also moved in arrest of judgment which motion was also overruled. Memo: On the trial of this Cause the Defendants excepted to two several opinions given on said trial and tendered their two bills of exceptions, which were signed sealed & enrolled and ordered to be made a part of the record in this Cause, and the same is accordingly done.

No 1. Commonwealth.

Upon an Indictment for
Moses Joseph & Margaret Prier Lewd & lascivious Cohabitation

Be it remembered that after the jury were sworn to try the case joined in this Cause the Commonwealth introduced a witness Joseph Ray who proved that he knew Moses Joseph, that he lived on Dry River in Rockingham County, - that he the witness & his wife on the 1st day of January 1877, moved into the same house with said Moses Joseph & remained there until sometime in February 1877, - but was frequently absent from there during that time, that he could not say how long he was absent during that time, that the Defendant Margaret Prier lived there with Moses Joseph during that time and worked and kept house for him and that he had seen Moses Joseph & Margaret Prier in bed together - but could not state how often. He believed they usually slept together and from what he saw, he thought they acted like man & wife while he lived in the house that witness & his

wife occupied one room down stairs and he supposed
Moses Joseph slept in the other - that there were also
two rooms up stairs, that from all he could see he
thought they lived like man & wife - that a woman
with whom Moses Joseph lived as his wife is still living
and residing with her son, but that they have not lived
together for a number of years. - In response to question
by defendants Counsel as to whether he was at Joseph's
house as much as seven days & nights during the month
of January & February 1877. witness replied he was there
that many days & nights at least but he could not
say how much longer. And also proved by a witness
James C. Heltzel that Moses Joseph lives in Rockingham
County - that he has a wife living at John Joseph's - or
a woman who used to be called his wife and with
whom he lived for many years & by whom he had a
number of children. - and that the mother of these
children was reputed to be his wife for years. That
he had been to Moses Joseph house in the day time
within 12 months next preceding the finding of the
indictment & saw Margaret Price there - but never
saw anything improper between her & said Moses Joseph.
And these being all the facts proven in the cause the
Jury retired from the bar to consider of their verdict
and after sometime returned into Court and rendered
the following verdict. That the jury find the defendants
Moses Joseph and Margaret Price guilty in the manner
& form as charged in the indictment and assess their

fine at One Hundred dollars John S. Effinger Foreman,
and thereupon the Defendant by Counsel moved the Court
to set aside said verdict and grant a new trial on
the ground that it is unsustained by the evidence and
the law and on the ground that the jury were misled
by the instructions of the Court as set forth in Bill of excep-
tions No 2. which motion the Court overruled - to which
opinion and action of the Court overruling said motion
the Defendants by their Counsel excepted excepted and
tendered this their 1st bill of exceptions which they
prayed may be signed sealed & made part of the
record in this cause and the same is accordingly done

Chas. J. O'Renall Seal

Commonwealth.

Moses Joseph & Margaret Prier }

Be it remembered that after the jury were sworn to
try the issue joined in this cause and after the jury
had heard the evidence and argument of Counsel the
jury retired from the bar to consider of their verdict
and after sometime returned into Court and returned
the following verdict "We the jury find the defendant
guilty as charged in the indictment and fix the fine
at fifty dollars" - and thereupon the Court instructed
the jury that the Indictment was a joint indictment
against Moses Joseph & Margaret Prier and directed
them to retire to their room and find a joint
verdict and thereupon the jury retired from the bar

and after sometime again returned into Court and rendered the following verdict "We the jury find the defendants guilty as charged in the indictment and fix their fine at Fifty dollars each. And thereupon the Court instructed the jury that they could not find a separate verdict against each or a separate fine against each Defendant and directed them to again retire to their room & consider of their verdict which they did and after sometime they returned into Court and rendered the following verdict "We the jury find the defendants Moses Joseph and Margaret Prior guilty in the manner & form as charged in the indictment and assess their fine at One Hundred dollars John S. Effinger Foreman, and thereupon the Defendants by Counsel submitted a motion in arrest of Judgment on the ground that the instructions given to the jury by the Court were erroneous - and calculated to mislead the jury - and on the ground that the verdict is uncertain & otherwise insufficient, which motion the Court overruled to which opinion & action of the Court overruling said motion the Defendants by their Counsel excepted & tendered this their 2nd bill of exceptions which they prayed may be signed sealed & enrolled & the same is accordingly done.

Chas. S. A. Merrill Seal

Virginia: Rockingham County, to-wit:-
J. J. Logan, Clerk of the County Court
of Rockingham County, do hereby certify that
the foregoing is a true transcript from
the record of the said Court, in the case
of ~~The Commonwealth~~ [&] ~~Moses~~
Joseph & Margaret Prier.

Given under my hand this
the 19th day of August 1878, and in
the 103rd Year of the Commonwealth

J. J. Logan,
Clerk

Commonwealth.

@ J Record.
Moses Joseph + Margaret
Primer.

Copy

Clerk's fee \$3.00

Mons Joseph de

20
Commendants of Virginia } Upon a writ of
} error to a judgment
of the County Court of
Rockingham.

This day came as well the
Plaintiff, in error, by ~~his~~ their Attorneys as the
Commendants of its Attorney - and the Court
having maturely considered the transcripts of the
Record of the judgment of the County Court of
Rockingham and the argument of Counsel
is of opinion that the said judgment is
erroneous and ought to be set aside - it
is therefore ordered ~~that~~ ^{reversed annulled and} that the judgment of
said County Court be ^{reversed annulled and} set aside and a new
trial awarded and that the Cause be re-
manded to the County Court for further
proceedings.

Entire Thos.
Mo. Bird

Entire

Conall
v
Hiram Joseph } Not for Conall.

Sin 1st V^o Cover. 262.
1st Call - 555.
7th Natl. 600.
8. Natl. 699.

Not language of the act
Chap- 192. Sec. 7- Code of 1873
Page 1208 of Code 1873.
The language is They shall be fined

G. E. Crutten

Cornell

✓ Σ vol.

Joseph

Moses Joseph &c

of } Supervisors

Commonwealth of Va
wbc

1881 May 21

Indorsement of bond
but set aside

