

THE STATE vs. HARRISON.

Though the statute (*Dig. ch. 52,*) contemplates that the injured party shall be endorsed as prosecutor, upon the indictment for a trespass, yet where the injured party is an infant or a married woman, the spirit and purpose of the statute are better accomplished by permitting the name of the father or husband to be endorsed as prosecutor.

Appeal from the Circuit Court of Washington County.

Hon. FELIX J. BATSON, Circuit Judge.

Mr. JOHNSON, Attorney General for the State.

Mr. Chief Justice ENGLISH, delivered the opinion of the Court.

John Harrison was indicted in the Circuit Court of Washington county, for an assault and battery upon *Jeremiah* Phelan. The name of *Richard* Phelan was endorsed upon the indictment as prosecutor. There was no statement at the end of the indictment showing upon whose information or testimony it was preferred.

The defendant moved to quash the indictment, because *Jeremiah* Phelan, the party alleged to have been assaulted, was not endorsed as prosecutor.

On the hearing of the motion, the prosecuting attorney proposed to prove that *Richard* Phelan, whose name was endorsed as prosecutor, was the father of *Jeremiah*: that *Jeremiah* was an infant, under twenty-one years of age, and that *Richard*, his father, was a resident of Washington county, and had thousands of dollars worth of property in said county, subject to execution. But the Court refused to hear such proof, and

quashed the indictment. The attorney for the State excepted and appealed.

Where the indictment is found upon the testimony of the party upon whose person or property the trespass is alleged to have been committed, the name of the prosecutor must be endorsed upon the indictment. The object of the Legislature was to discourage frivolous and malicious prosecutions, by taxing the prosecutor with costs, in cases where the prosecution turns out to be groundless. *State vs. Brown*, 5 Eng. 104. No doubt it was within the contemplation of the Legislature that as a general rule, the injured party would be endorsed as the prosecutor. See *Digest*, chap. 52, secs. 53, 54, 87, 88, 89. But where the party injured is an infant, or a married woman, the spirit and purpose of the statutes are better accomplished by permitting the name of the father or husband to be endorsed as prosecutor.

The judgment is reversed, etc.
