

No. 460

Supreme Court of Illinois

Thomas Taylor

vs.

Robert McMillan

(379)  7

State of Illinois }
County of So Davie }
At

At a Circuit Court of the sixth Judicial
Circuit of the State of Illinois, begun and held
at the Court House in Galena in said County,
on the tenth day of August in the year of our
Lord, one thousand eight hundred and thirty &
Present

The Honorable Stephen T. Logan, Judge.

Samuel Strode, Clerk.

Among other were the following proceedings, to wit:
Robert M. Miller } of the August term of the
vs } Trespass, Damages \$500 } So Davie Circuit Court for the
Thomas Taylor } year 1835.

The Clerk of the So Davie Circuit Court will issue
a Capias ad respondendum against the defendant
returnable to the next August Term of the So Davie
Circuit Court, conformable to the foregoing precept and
affidavit herewith filed. April the 23^d 1835.

J. M. Strode for Pltff

State of Illinois }
So Davie County }
At

Robert M. Miller being duly sworn states under oath
that on or about the 19th Instant on board the Steam-
Boat Warrior while sailing on the Mississippi river
opposite the County of Rock Island, in the State of
Illinois, one Thomas Taylor committed an assault &
Battery on his person without any provocation whatever
by striking him and knocking him down with a stick
or piece of timber, commonly called the capstan bar,
whereby he was considerably injured. This affiant further
states that he is about to commence an action of Trespass
against the said Thomas Taylor for the aforesaid injury
and that he believes he has received injury & damage to
his person and his feelings to the amount of five

hundred dollars. and that he verily believes he will
be in danger of losing the benefit of whatever Judgment
he may obtain against the said Thomas Taylor
unless he be held to bail. wherefore he prays the clerk
of the So Daviess Circuit Court for the writ of *habeas
ad respondendum*

Sworn to & Subscribed before me in } Robt. M. Miller
my office this 23rd day of April A.D. 1835.

Samuel Smoker, Clerk.

Whereupon a *habeas* was issued as follows. to wit.

State of Illinois }
So Daviess County } et

The People of the State of Illinois.

To the Sheriff of the County of So Daviess, Greeting.
We command you that you take Thomas Taylor
and him safely keep, so that you have his body
before the Circuit Court of So Daviess County, at the
next term, to be holden at Galena on the second
Monday of August next to answer Robert M. Miller
in a plea of *Trespas*. Damages five hundred dollars
And have you then there this writ.

Witness the Hon Thomas Ford Judge of the
Sixth Judicial Circuit of the State of Illinois, at
Galena this 23rd day of April, A.D. 1835.

Attest Samuel Smoker, Clerk.

The Sheriff is directed to hold the defendant to bail in the sum
of

Samuel Smoker, Clerk.

And afterwards on the thirtieth day of July in the year eighteen hundred and thirty five a declaration in the aforesaid case, was filed in the clerks office of said Circuit Court in the words and figures following to wit.

State of Illinois } of the August term of the Circuit
So Daviess County } et of So Daviess Co.

Thomas Taylor was attached, to answer Robert M. Miller, a plea of Trespass, and thereupon the said Robert M. Miller by James M. Strode his Attorney complains against the said Thomas Taylor, for that the said Thomas Taylor, on the twentieth day of April A.D. 1835, with force and arms, made an assault upon the said Robert M. Miller, in on board of a certain Steam Boat called the Warrior then on the Mississippi river opposite the County of Rock Island and State of Illinois, to wit, at the County of So Daviess, and then and there with great force and violence struck and knocked the said Robert M. Miller down to and upon the deck of the said Steam Boat Warrior, and then and there with a capstan bar, or club, and with his fists gave and struck the said Robert M. Miller a great many violent blows and strokes on and about his face, head, breast and arms and divers other parts of his body and also then and there with great force and violence again threw him the said Robert M. Miller down to and upon the deck of said Steam Boat, and then and there kicked the said Robert M. Miller and gave and struck him a great many other blows and strokes. By means of which said several premises he the said Robert M. Miller, was then and there, greatly hurt, lacerated, and wounded, and became and was sore and disordered, and so remained and continued for a long space of time, to wit, for the space of three days then next following, during all which time, he the said Robert M. Miller thereby suffered and underwent great pain, and was hindered and prevented from performing and transacting his necessary affairs and business, by him during that time to be performed and transacted, to wit at the County aforesaid. And other wrongs

to the said Robert M. Miller then and there did against the peace of the people of the State of Illinois, and to the damage of the said Robert M. Miller of five hundred dollars, and therefore he brings suit &c.

And also for that the said Thomas Taylor on the day and year in the first count mentioned, with force and arms &c. to wit. at the County aforesaid, seized, took and led away a certain bay horse gelding of the said Robert M. Miller, of great value, to wit. of the value of one hundred and fifty dollars of lawful money of the United States. Wherein then found and being, and converted and disposed of the same to his own use. And other wrongs to the said Robert M. Miller then and there did against the people of the State of Illinois, and to the damage of the said Robert M. Miller of five hundred dollars, and therefore he brings his suit &c.

Attest for Pltff

And on the fifteenth day of August in the same year, the defendant by his attorney, filed a motion, in open Court that the aforesaid suit be dismissed, in the words following to wit.

Thomas Taylor

vs

Robt M Miller } Defendant by his atty moves that
this suit be dismissed.

1st. Because the Plaintiff in this suit at the time of its commencement was not a resident of the State of Illinois & did not file a bond for security for costs, according to law, as appears by affidavit of Henry Todd

Chas J Hempstead atty for
Pltff

Which affidavit is as follows, to wit

State of Illinois }
St Davids County } et

Robert M Miller }

vs

Thomas Taylor } Henry Todd being duly sworn, says

that he is acquainted with said Robert M. Miller, who informed this affiant in April last, that he resided in the State of Ohio and that he came from New Orleans to Galena in said month of April, and that he had been living in New Orleans for some time previous to last April, from which information said affiant believes that said Miller

ad aforesaid, was not a resident of the State of Illinois
Subscribed and sworn to before me

this 14th day of August 1835

his
Henry X Todd
mark

Samuel Snoker Clerk of
St. Davids Circuit Court

Which aforesaid Motion was overruled by the Court, and a plea was filed in said Court in the following words, to wit:

Thomas Taylor }
plea ads } Trespass. In the Circuit Court of St. Davids County
Robert M. Miller } August term 1835.

And the said Thomas Taylor by his Atty comes and defends, and says that as to the trespass aforesaid, above complained of by the said plaintiff in the first count of his said declaration, the said defendant says that the said plaintiff ought not to have *actio non* because he says that at the time and place when and where the trespass aforesaid, as above by the said plaintiff supposed to be done, the said plaintiff was a person employed as a deck hand on board a certain vessel or Steam Boat called the Warrior, then and there being in and navigating the Mississippi river, a navigable river in and of the United States, of which said vessel or Steam Boat the said defendant was then and there the mate, and of which, said Steam Boat one Joseph Throckmorton was then and there the master and commander, and the said Captain at the time and place aforesaid commanded one John Tuller who was then & there also a deck hand on board said Steam Boat to take up a block to get the said Boat off and lose from the rocks of the upper Rapids so called of the said Mississippi river upon which said rocks the said Boat was then and there fast, and the said master then and there likewise ordered said Tuller to come off from the

forecastle so called of said Boat. which was a just and reasonable command. but the said Tullis then and there refused to obey the said master, to come off said fore-castle, run to take up said block as aforesaid, and used insolent and disobedient language to the said master, whereupon the said master ordered the said defendant as mate aforesaid to put off said Tullis from the fore-castle, whereon he was standing, and the said plaintiff then and there together with another deck hand of said Boat called

ordered said defendant not to lay hands on, or touch said Tullis at his peril, and the said defendant then and there believing that said Tullis and said plaintiff intended to disobey the lawful commands of the said master as aforesaid, and that said plaintiff intended to resist by force the said lawful commands of said master, and to raise a mutiny on board of said Boat did strike the said plaintiff with a capstan or club as aforesaid, as he well and lawfully might do for the cause aforesaid, and which is the whole of the trespass aforesaid above by and said plaintiff complained of and this the said defendant is ready to verify &c. Turney, Mills & Hempstead for Dft.

And for further plea to the said first count of said plaintiffs declaration the said defendant says (actio non) because he says that the said defendant before and at the time when &c. in the said first count of said declaration mentioned was, mate of a certain vessel or Steam Boat called the Warrior (whereof on Joseph Throckmorton was Master) then on and navigating the Mississippi river, and the plaintiff then was a person commonly called a deck hand in and

employed as such on board said Boat, and the said defendant further says that the said plaintiff just at and before the said time mentioned in said first count of said plaintiffs declaration, neglected his duty as such deck hand as aforesaid in and on board of said vessel and Steam Boat

and conducted himself in a mutinous, disorderly, and improper manner, and neglected and refused to perform his proper duty on board said Steam Boat, whereupon the defendant for the preservation of discipline and order on board said vessel and Steam Boat, at the said time when he did moderately chastise and correct the plaintiff for his said neglect of duty, and misconduct, and in so doing did necessarily and unavoidably a little beat and bruise and ill treat the plaintiff as it was lawful for him to do for the causes aforesaid, which are the same supposed trespasses in said first count, in said plaintiff's declaration, and this he is ready to verify &c. Wherefore he prays judgment &c.

Turney, Mills, & Hempstead for Dft

And the said defendant says as to the said second ~~count~~ ^{count} in the said plaintiff's declaration mentioned ~~as~~ ^{not} guilty, in manner and form as by ~~the~~ ^{the} plaintiff in his said second count is alleged, and of this he puts himself upon the country &c.

Turney, Mills, & Hempstead for Dft

And the plaintiff doth the like

Shode Atty for Plff.

Afterwards to wit, on the seventeenth day of August, the plaintiff filed, by his attorney, the following demurrer, in open court, to wit:

Robert M. Miller }

vs

Demure Thomas Taylor }

And the said plaintiff by his atty, as to the first and second pleas of the said defendant, by him above pleaded, saith that the same, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law to bar or preclude him the said plaintiff from having or maintaining his aforesaid action thereof against him the said defendant

and that in the said plaintiff is not bound by the
law of the land. to answer the same and this in the
said plaintiff is ready to verify: wherefore for want of
sufficient pleas in this behalf in the said plaintiff
prays judgment: and his damages by him sustained
on occasion of committing the said trespasses to be
adjudged to him &c.

Joinder in Demurrer

Shooh & Drummond

for plff

Hempstead, Tunny & Mitty

And on the same day the defendant by his counsel filed an
amended ^{to open court} plea as follows to wit

In the Circuit Court of St. David's County August term 1835

Thomas Taylor }

Amended plea

plea

Robert M. Miller }

Trespass. Amended pleas.

And the said Thomas Taylor by his
Atty comes and defends, when &c. and says that in
the trespass aforesaid above complained of by the said
plaintiff, in the first count of his said declaration, the
said defendant says that the said plaintiff ought not
to have &c. (actio non) because he says that at the time
and place when and where, the trespass aforesaid above
by the said plaintiff supposed to be done the said
plaintiff was a person employed as a hand on board
a certain vessel or Steam Boat called the Warrior
then and there being in and navigating the Mississippi
river, a navigable river in and of the United States, of
which said vessel or Steam Boat the said captain
was then and there the mate, and of which said Steam
Boat one Joseph Throckmorton was then and there
the master and commander, and the said master at the
time and place aforesaid commanded one John Tullis
who was then and there employed on board of said Boat

as a hand, to take up a block to get the said Boat off and loose from the rocks of the upper rapids so called of the said Mississippi river upon which said rocks the said Boat was then and there fast and the said Master then and there likewise ordered said Tullis to come off from the forecastle of

of said Boat which was a just and reasonable command, but the said Tullis then and there refused to obey the said Master to come off said forecastle, and to take up said block as aforesaid, and used insolent and disobedient language to the said Master. Whereupon the said Master ordered the said defendant as mate aforesaid to put off said Tullis from the forecastle whereon he was standing, which was a reasonable and proper command, and the said plaintiff then and there together with another hand of said Boat called Doan

came forward & interfered & ordered said defendant to lay hands on or touch said Tullis at his peril, and the said defendant then and there having reasonable ground to believe that said Tullis and said plaintiff were combining to resist the lawful commands of said Master as aforesaid, and that they did in fact resist them, and that said plaintiff was about to resist by force the said lawful commands of said Master and to raise a Mutiny on board of said boat, gently laid his hands on him as he well and lawfully might do for the causes aforesaid and which is the same trespass aforesaid above by the said plaintiff complained of and that the said defendant is ready to verify &c.

3^d Plea And for further plea to the said first count of said plaintiffs declaration the said defendant says (actio non) because he says that the said defendant before and at the time when &c. in said first count of said declaration mentioned, was mate of a certain Vessel or Steam Boat called the Warrior, whereof one Joseph Throck-

Morton was master, then on and navigating the Mississ-
ippi river. and the plaintiff then was a person
commonly called a hand in and belonging to. and
employed as such on board said Steam Boat. and the
defendant further says that the said plaintiff just at and
before the said time mentioned in said first count of said
plaintiffs declaration neglected his duty as such hand
as aforesaid in and on board of said Vessel and Steam-
Boat and conducted himself in a mutinous, disorderly,
and improper manner, and neglected and refused to
perform his proper duty on board said Steam Boat
whereupon the defendant, acting under the command
& by the order of the said master, for the preservation of
order and discipline on board said Vessel or Steam Boat
gently laid his hands on said plaintiff & moderately
corrected him, at the said time where. The plaintiff
for his said neglect of duty and misconduct and in so
doing did necessarily and unavoidably a little beat and
bruise and if treat the plaintiff as it was lawful
him to do for the cause aforesaid, which are the same
supposed trespasses in said first count in said plaintiffs
declaration, and this he is ready to verify &c. Wherefore he
prays judgment &c.

And the said defendant says as to the said second count
in the said plaintiffs declaration mentioned, he is not
plea to guilty in manner and form as by the plaintiff in his
said second count is alleged and of this he puts himself
not guilty upon the Country &c. Hempstead, Turney, & Mills
And the plaintiff likewise for Dft

Attest & Amended

for Plff

To which first and second amended pleas of the defendant the
plaintiff by his attys demurred as follows, to wit.

Robert M. Miller

vs } trespass }

Thomas Taylor } And the said plaintiff by his attorney
demurreth &c. and says that the first and second amended
pleas by the said defendant above pleaded, and the
matters therein contained in manner and form as the
same are above pleaded and set forth are not in
point in law to bar or preclude him the said plaintiff

from having or maintaining his aforesaid action thereof
against him the said defendant, and that he the
said plaintiff is not bound by the law of the land
to answer the same, and this he the said plaintiff is
ready to verify, wherefore for want of sufficient pleas
in this behalf he the said plaintiff prays judgment
and his damages by him sustained on occasion of
the committing of the said trespasses to be adjudged
to him &c.

Grant. Stock & Drummond

Joinder in Demurrer

for Plaintiff

Hempstead & Willy

And on the day following which was the eighteenth day of
August the plaintiff by his atty filed in open Court a
replication as follows to wit:

Robert M. Miller }

vs

Thomas Taylor } And the said plff by his atty for
Reply to the first plea of the said defendant, by
him above pleaded says (precludi non) because he
saith that the said deft at the said time when &c. of his
own wrong and without the cause by him in his first
plea alledged committed the said several trespasses in
the introductory part of that plea mentioned in manner
and form as the said plff hath above in his said dec-
laration complained against him the said deft. and
this he the said plff prays may be enquired of by the

country &c. Grant. Strode & Drummond for
and the dft doth likewise Puff
Hempstead & Mills for Dft

In the record of the proceedings of the aforesaid cause
is the following on the eighteenth day of August 1835:
to wit.

Robert M. Miller }

vs

Thomas Taylor } This day came the parties by their
Attornies. and issue being joined. thereupon came
a Jury of good and lawful men to wit. Joseph
Keller. David Gregory. Daniel Avery. David Milligan
Joseph Beadle. John Flack. William Goodman.
Daniel Johnson. Thomas S. Belding. Asa Smug.
William Roberts. and Samuel Warner, who being
elected. tried and sworn. well and truly to try the issue
joined. and after hearing the evidence. and the arguments
of counsel retired from the bar in the custody of the
Sheriff to consider of their verdict.

The following is on the records of said cause on the day
following. to wit the nineteenth day of August, 1835:

Robert M. Miller }

vs

Thomas Taylor } This day the Sheriff returned the
following as the verdict of the Jury. empannelled in
this case yesterday. "We the Jury find for the
Plaintiff and assess the damages at ninety three
dollars & fifty cents." It is thereupon considered by

Defendant. the aforesaid sum of ninety three dol.
and fifty cents. together with his costs. about his suit
in this behalf laid out and expended, and that he
have execution therefor &c.

In the records of said Suit of the nineteenth day of August
as aforesaid, is as follows to wit.

Robert M. Miller }

vs

Thomas Taylor }

In Trespass vi et armis.
On motion of the defendant

entering into bond in 30 days with Patrick Gray
his security in the penalty of three hundred dollars
conditioned as the law directs.

Which bond is in the words and figures following, to wit.
Know all men by these presents, that I, Thomas Taylor
at present in Salina, and County of Jo Daviess, as principal
and Patrick Gray of said County, and State of Illinois, as
security, are held and firmly bound unto Robert M. Miller
also of the same County and State, in the penal sum
of three hundred dollars, current money of the United
States, to wit: to pay, or cause to be paid, the sum of

we bind ourselves, our heirs, executors, & administrators
jointly and severally, and firmly by these presents: Witness
our hands and seals this 19th day of August in the year 1835.
The condition of the above obligation is such that whereas
the said Robert M. Miller did on the 19th day of August
in the present year in the Circuit Court in and for the
County of Jo Daviess, and State aforesaid recover a judgment
against the above bounden Thomas Taylor for the sum
of ninety three dollars and fifty cents damages, and his
costs of suit (not yet assessed) from which said judgment
of said Circuit Court the said Thomas Taylor has prayed
for and obtained an appeal to the Supreme Court of
the State. Now if the said Thomas Taylor shall duly
prosecute his said appeal with effect, and shall
moreover pay the amount of the judgment, costs,
interest and damages, rendered, and to be rendered
against him, in case the said judgment shall be
affirmed in the said Supreme Court. Then the above

Obligation to be void, else to remain in full force and
virtue.

Taken before me in open
Court this 19th day of
August 1835
Samuel Smoker Clerk.

T. Taylor Esq

Patrick Gray Esq

I hereby certify that the foregoing is a true and
correct transcript from the record of the proceedings
which were had in the Circuit Court of St David's
County in the aforesaid case. In testimony whereof
I have hereto signed my name and affixed the
Seal of the said Circuit Court this third day of
November in the year eighteen hundred and thirty five

Attest Samuel Smoker Clerk.

Thomas Taylor
vs
Robert W. Miller

1835

Filed Dec 11/5. 1835
J. M. Luman

1835

Dismissed

Dec 11/5

1835

Proceeding
op.

Miller J. On appeal
ad m J Sup Ct
Taylor } Appellant

And now at this time comes
Agued Coules, of Counsel of the
appellant and says that in the Record and
proceedings there is manifest error, in this
that the Court sustained the Demurrer
to the Defs. Plea.

For this and other Errors
apparent in the Record — The appellant
prays that the Judgment may be
reversed.

Agued Coules, for
Taylor Appellant

— And the said Miller says, by his Attorney
that there is no error in the record and proceedings
of said suit, and that the same ought not to be
reversed.

James Grant for Appellee

Taylor appellant

vs
Miller appellee

Argument of
Errors

Fida Nov. 16, 1835

J. M. Duncan