

12021

No. _____

Supreme Court of Illinois

McKean

vs.

Owen

71641  7

Alexander K. Quinn
v
James McKean

Error to Gmndy

And now comes the said plaintiff in error by Slicky & Cook his attys and saith that in the record and proceedings aforesaid & in the rendition of the Judgment aforesaid there is manifest error in this & wit

1st The Court erred in refusing to allow plaintiff in error to read in evidence to the Jury the bill in Chancery set out in the bill of exceptions

2^d The Court erred in excluding the evidence offered by the defendant in the Court below to show that at the time of speaking the words to witness Taker, that defendant in Court below had been informed that the plaintiff in Court below had sworn to the bill in Chancery mentioned in the bill of exceptions and that defendant then spoke the words, and that the bill had been in fact sworn to by McGrath one of the other Co. Commissioners, and that the contents of said bill were false

3^d The Court erred in rejecting the testimony of Wilson Lelaypool ^{offered} to prove the facts offered to be proven by him

4th The Court erred in rejecting the testimony offered by Jacob Lelaypool offered by dep in Court below as Statue in bill of exceptions

- 5th The Court erred in giving the 1st instruction asked for by the plaintiff in the court below
- 6th The Court erred in refusing to give the 1st & 2^d instructions asked for by defendant in court below
- 7th The Court erred in refusing the third ~~instruction~~ instruction asked for by defendant in court below
- 8th The Court erred in giving the 4th instruction asked for by plaintiff in court below

Whitely & Cook
plffs attys

And the said James McKean defendant in error by C. S. Starbuck his attorney comes and says that there are no such errors in the record aforesaid as the said Plaintiff in error hath above assigned nor any nor either of them, Whereupon he prays that the judgment of the Circuit Court of New York County aforesaid may be in all things confirmed

C. S. Starbuck
for Def in Error

Be it remembered that heretofore
to wit, on the 14th day of May 1846
the following summons issued from
said Court, as follows, to wit,

"State of Illinois
County of Cook

The people of the
State of Illinois to the Sheriff of said
County Greeting

We Command you that
you summon Alexander H. Over if
he be found in your County personally to
stand and appear before our Circuit Court
of our said County, on the first day of
the next term thereof, to be holden at
the Court house in Morris, in said
County on the first Monday after the fourth
Monday of September 1846 to answer
James McKean in an action on the
case for slander to the damage of him
the said Plaintiff of three thousand
dollars, as is said, and have you
there and there this writ

Witness our hand and the private seal
of our said Court and the private seal
of the Sheriff hereunto affixed in said County, the
official seal being provided)
This 14th day of May 1846

Evil Keister Clerk

Which said summons was returned
to the Clerk office of said Court on the
second day of June 1846, with the fol-

having endorsed thereon, to wit
I served the within writ by read-
ing to the within named person as therein
Commanded this 1st day of June 1846
William E. Thompson Sheriff
By P. Kelly Deputy

Deer	80
Antelope	62½
Elk	12½
Total \$1.25	

Grand Jury Circuit Court. Nov. Term 1847

United States of America
State of Illinois
County of Grundy

Was before the Hon John
McLean one of the Justices of the Supreme
Court of the State of Illinois and Presi-
ding Judge of the Ninth Judicial Circuit
as a Circuit Court begun and held
at the Court house in Morris in the
County of Grundy and State and Circuit
aforesaid on Monday the ~~first~~ second
day of November in the year of our Lord
one thousand eight hundred and
forty seven and of the independence
of the United States the saying second

Present the

The Hon John McLean Judge
William E Armstrong Sheriff
Burton C Cook State Attorney

attest
Geo H Kinsted

Be it remembered that heretofore
to wit on the 25th day of September 1846 ~~the~~ was filed in the Clerk's office
of said Court the declaration of James
McLean, in a certain suit pending
in said Court, wherein James McKim
is Plaintiff & Alexander McQueen is Defen-
-dant in a case for slander, and which

is in the Words and figures following
to wit;

"Grundy County Circuit Court
Of the October Term in
the year of our Lord one
thousand eight hundred
and forty six

State of Illinois,

Grundy County &

James McKean, Plain-
tiff in this suit, by Fellows and Hender-
son his Attorneys, complains of Bluf-
ford & Owen Defendants in this suit being
summoned &c of a plea of Trespas on the
Case for Hauden

For that whereas the said
Plaintiff is a good, true honest, just and
faithful citizen of the State of Illinois
and as such has always behaved and
conducted himself and until the
committing of the several grievances &
by the said Defendants as hereinafter
mentioned, was always reputed and
esteemed and accepted by and amongst
all his neighbors and other good and
worthy citizens of this State to whom
he was in anywise known to be a per-
son of good name fame and credit, to
wit at Morris in the County of Grundy
aforesaid and whereas also the said
Plaintiff hath not ever been guilty or

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until the time of the speaking and publish-
ing of the several false, scandalous, mali-
cious and defamatory words by the said Defend-
ant as hereinafter mentioned been sus-
pected to have been guilty of swearing
falsely as hereinafter stated to have been
charged upon and imputed to him
by the said Defendant By means
whereof the said Plaintiff, before the com-
mitting of the said several grievances
to the said Defendant as hereinafter
mentioned, had deservedly obtained the
good opinion and credit of all his nei-
ghbors and other good and worthy citizens
of this State to whom he was in various
known, to wit at Morris in the County
of Grundy aforesaid But the said
Defendant well knowing the premises
but greatly envying the happy state and
condition of the said Plaintiff and con-
triving wickedly and maliciously intending
to injure the said Plaintiff in his said
good name fame and credit and to
bring him into public scandal infamy
and disgrace with and amongst all his
neighbors and other good and worthy citi-
zens of this State and to cause it to
be suspected and believed by those neigh-
bors and citizens that the said
Plaintiff had been and was guilty of
swearing falsely as hereinafter stated to

have been charged upon and imputed to him by the said Defendant and to say, harass, oppress, impoverish and wholly ruin him the said Plaintiff therefore to wit on the twenty fifth day of December in the year of our Lord one thousand eight hundred and forty five at Morris in the County of Grundy aforesaid in a certain discourse which the said Defendant had of and concerning the said Plaintiff in the presence and hearing of Charles Royal and Francis McWhitemore and divers other good and worthy citizens of this State then and there in the presence and hearing of the said last mentioned citizens at the County of Grundy aforesaid falsely and maliciously spoke and published of and concerning the said plaintiff the false scandalous malicious and defamatory words following that is to say "Mr McKean (the Plaintiff meaning) has sworn false and I (the Defendant meaning) can prove it and it will appear on the Dockets" thereby then and there meaning that the said Plaintiff had been and was guilty of swearing falsely

2 Cont

And afterwards to wit on the day and year last aforesaid at Morris in the County of Grundy

504
until the time of the speaking and publish-
-ing of the several false, scandalous, mali-
cious and defamatory words by the said Defend-
ant as hereinafter mentioned been sus-
pected to have been guilty of swearing
falsely as hereinafter stated to have been
charged upon and imputed to him
by the said Defendant By means
whereof the said Plaintiff before the com-
mitting of the said several grievances
to the said Defendant as hereinafter
mentioned, had deservedly obtained the
good opinion and credit of all his nei-
ghbors and other good and worthy citizens
of this State to whom he was in any man-
ner known, to wit at Morris in the County
of Grundy aforesaid But the said
Defendant well knowing the premises
but greatly envying the happy State and
Condition of the said Plaintiff and con-
triving wickedly and maliciously intending
to injure the said Plaintiff in his said
good Name fame and Credit and to
bring him into public Scandal infamy
and disgrace with and amongst all his
Neighbors and other good and worthy citi-
zens of this State and to cause it to
be suspected and believed by those neigh-
bors and citizens that he the said
Plaintiff had been and was guilty of
swearing falsely as hereinafter stated to

aforsaid in a certain other dis-
course which which the said Defendant
then and there had of and concerning
the said plaintiff in the presence and
hearing of divers other good and wor-
thy Citizens of this State, the said
Defendant further contriving and
intending as aforsaid, then and there
in the presence and hearing of the
last mentioned citizens falsely and
maliciously spoke and published of
and concerning the said Plaintiff the
false scandalous malicious and
defamatory words following, that is to
say "Hea (the Plaintiff meaning) has sworn
false" - "He (the Plaintiff meaning) has
sworn false" and "I (Defendant meaning)
can prove it (said false meaning meaning)
and it (said false meaning meaning)
will appear on the Dockets" thereby then
and there meaning that the said plain-
tiff had been and was guilty of swearing
falsely and that it would appear on the
Dockets - And afterwards to wit on
the day and year last aforsaid, at Morris
in the County of Grundy aforsaid in a
certain other discourse which the said
Defendant then and there had of and
concerning the said plaintiff in the
presence and hearing of divers other
good and worthy Citizens of this State

The said defendant further contriving
and intending as aforesaid then and there
in the presence and hearing of the said
last mentioned falsely and maliciously
spoke and published of and concerning
the said plaintiff the false ~~malicious~~
scandalous, malicious and defamatory
words following, that is to say "McKean
(plaintiff meaning) has sworn false,
McKean plaintiff meaning) has taken
a false oath (the plaintiff meaning) has
sworn false, and it (said false meaning
meaning) will appear on the Dockets
(the Dockets of the Circuit Court of
said Grundy County, meaning) thereby
then and there meaning that the said
plaintiff had been and was guilty of
swearing falsely, and that the fact of his
the said plaintiff's having sworn falsely
would appear on the ^{records of the} Circuit Court of
the aforesaid Grundy County.

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And afterwards, to wit, on the
day and year last aforesaid at Morns in
the County of Grundy aforesaid, in a
certain other discourse which the said
Defendant then and there had of and
concerning the said plaintiff, in the pres-
ence of divers other good and worthy cit-
izens of this State the said Defendant fur-
ther contriving and intending as aforesaid, then and there in the presence and

hearing of the ^{Said} last mentioned citizens falsely
and maliciously spoke and published of
and concerning the said Plaintiff the
false scandalous, malicious and de-
famatory words following, that is to say Mr
"McKean (plaintiff meaning) has sworn
false and I (defendant meaning) can prove
it. (said false swearing meaning) He (pla-
intiff meaning) has sworn false, and I (def-
endant meaning) can prove it. (said false
swearing meaning) by the docket (the docket
& records of the Circuit Court of said Sum-
my County meaning) thereby then and there
meaning that the said Plaintiff had
been and was guilty of swearing falsely
and that such fact could be established
by the records of the aforesaid County Cir-
cuit Court.

5th
And afterwards to wit on the
day and year last aforesaid, at Morris
in the County of Grundy aforesaid, in a
certain then discourse which the said
Defendant then and there had of and
concerning the said Plaintiff and of
and concerning a certain suit in
Chancery which had been pending in
the Circuit Court of the aforesaid
Grundy County, wherein the County
Commissioners of said Grundy were Com-
plainants and the said Alexander H
Cowan was defendant in the presence

and hearing of divers other good and worthy
Citizens of this State the said Defendant
further contriving and intending as aforesaid
then and there in the presence of
and hearing of the said last mentioned
Citizens falsely and maliciously spoke
and published of and concerning the
said plaintiff and of and concerning the
aforesaid Chancery suit and the pro-
ceedings had therein the false scandalous
and malicious and defamatory words
following, to wit; that is to say; Mr. Chas.
Kear (Plaintiff meaning) has sworn false
and I, (Defendant meaning) can prove it;
and it will appear on the Records; from
the record and proceedings in said suit
in said Circuit Court of said Grundy
County meaning;

Through then and there meaning that the
said plaintiff had been and was guilty
of swearing falsely in said suit, and that
it would appear in the proceedings in
said suit

By means of the speaking and publi-
cizing of which said several false, scan-
dalous, malicious and defamatory words
by the said Defendant as aforesaid the said
plaintiff hath been and is greatly injured
in his said good name, fame and credit
and brought into public scandal, in-
jury and disgrace with and amongst

all his neighbors and other good and
the citizens of this state inasmuch as
themselves of these citizens and neighbors to
whom the innocence and integrity of the
said plaintiff in the premises was unknown
have on account of the speaking and pub-
lishing of which said several false, scandal-
ous, malicious and defamatory words
by the said Defendant as aforesaid from
thence he thence suspected and believed
and still do suspect and believe the said
plaintiff to have been and to be a person
guilty of swearing falsely so as aforesaid
charged upon and imputed to him
by the said Defendant, and here by reason
of the committing of the said grievances
by the said Defendant as aforesaid from
thence he thence wholly refused and still
do refuse to have any transaction, acqui-
sance or discourse with him the
said plaintiff as they were before used
and accustomed to have and otherwise
would have had, and also by means
of the premises the said plaintiff hath
been and is otherwise much injured
and damaged to wit, at Morris in
the County of Grundy aforesaid, to the
damage of the said plaintiff of three
thousand dollars, and therefore he
brings his Suit &c

Gellous & Henderson
Plffs attys

And afterwards, to wit, on the 14th day
of June A.D. 1847 the said Defendant filed
in the Clerk's office of said Court, his
plea which is in the words and figures
following to wit

Alfred McKim
as } Sundry County Court
James McKim } Clerk June Term
A.D. 1847

And the said Defendant comes
and defends &c by Glover and Cook
his attys and says Actio non &c be-
cause he says he is not guilty in manner
and form as the said plaintiff hath
above thereof complained against him
And of this he puts himself upon the
County

Glover & Cook

b. d
And the plaintiff doth the like
Follows

Self atty.

Grand County Circuit Court Nov. Term 1847
United States of America
State of Illinois
Grand County

Plas before the Hon
John Wheaton one of the Justices of the
Supreme Court of the State of Illinois
and Presiding Judge of the Ninth
Judicial Circuit, at a Circuit
Court begun and held at the Court
house in Morris in the County of Bond
and State of Illinois aforesaid on
Monday the ~~twenty~~ second day of Novem-
ber in the year of our Lord one thousand
eight hundred and forty seven and
of the independence of the United
States the ~~seventh~~ second
Present

Mr Hon. John Wheaton Judge
William C. Armstrong Sheriff
Benton Cook State Attorney
Attst

Geo H. Kestel etc
Be it remembered that heretofore
to wit, on the 24th day of November
1847 being one of the days of
the session of said Term aforesaid Court
the following proceedings, among
others, were had before said Court
to wit;

James McKean }
vs }
Alexander A. Owen } case for slander

This day came the Plaintiff
by Fellows, Randall & Henderson his
Attorneys, and the said Defendant
by Lewis, Osbry & Seland his attor-
neys, and the issue being joined
herein thereupon came the following
jurors of a jury, to wit, Andrew J.
Robb, C. E. Conklin, Ira W. Rutherford,
John Simmons, Thomas Hornum,
William Sattell, William H. Mc
Fall, Elijah Saltmarsh, William
Hornum, John B. Moore, Amos J.
Barber and William Hoag, who
being elected, tried and sworn the
issue herein well and truly to try, after
hearing the evidence and arguments of
counsel, retired to consider of their ver-
dict. And by agreement of the parties
it is ordered that the jury, when have
agreed upon their verdict, may seal the
same and deliver.

And afterwards to wit, on the 23rd
day of November 1847 as yet after the said term
of said Court the following further proceed-
ings were had in said cause, to wit:

James McKean }
vs } one for slander
Alexander A. Owen }

This day the jury
empanelled in this cause returned

into court and delivered the following
verdict "We the Jury find the Defend-
ant guilty in manner and form as
charged in the Plaintiffs declaration
and assess the damages at two hun-
dred dollars, and thereupon the De-
fendant by his attorneys enters a
motion for a new trial and an ar-
rest of Judgment, which upon con-
sideration, is overruled by the Court.
It is therefore considered that the
said Plaintiff do have and recover of
the said Defendant the said sum of
two hundred dollars damages, together
with his costs and charges in this be-
half expended, and that he have
execution therefor.

And thereafter, as yet upon the
said 25th day of November 1847 the follow-
ing further proceedings were had in said
cause to wit,

James McLean }
vs }
Alexander A. Cowie } Case for Slander.

This day again came
the parties hither by their attorneys and
the defendant prayed an appeal to
the Supreme Court of this State, which
was granted by the Court, upon condition
that the Defendant enter into bond con-

detained as the law directs, with Elijah
Sattmarsh, Vander, Prospect, and
Philip Rose as his securities within
thirty days

And thereafter, to wit, on the
24th day of December A.D. 1847, the said
defendant, filed in the Clerk's office
of said Court, his appeal bond, which
is as follows to wit,

State of Illinois, County of Grundy
Grand Jury of said County, Dec. 1847

James McKean
vs
Alexander A. Owen } case for slander

Know all men by
these presents, that we Alexander A.
Owen, Elijah Sattmarsh, Philip
Rose and Vander Prospect all of
said Grundy County, the first as prin-
cipal, and the others as sureties, are
held and firmly bound unto James
McKean of the same County, in the
penal sum of three hundred and fifty
dollars, current money of the United
States, for the payment of which well
and truly to be made, we bind ourselves
our heirs, executors and administrators
jointly severally and firmly by these presents

Witness our hands and seals this
25th day of November AD 1847

The Condition of the above obligation is such that whereas, the said James M. Keen, did on the 24th day of November AD 1847 in the Circuit Court in and for the County and State aforesaid recover a judgment against the above bounden Alexander K. Orrin for the sum of two hundred dollars damages and sixty three dollars costs from which said Judgment of the said Circuit Court, the said Alexander K. Orrin has prayed for and obtained an Appeal to the Supreme Court of said State. Now of the said Alexander K. Orrin shall duly prosecute his said Appeal with effect, and shall moreover pay the amount of the Judgment interest and Damages, rendered and to be rendered against him in case the said Judgment shall be affirmed in the said Supreme Court. When the above obligation to be read, thereon to be and remain in full force

Alexander K. Orrin

Wendell Newport

Philip Rose

Elijah Valtmarsh

Test me and introduced into
before me at my office in
Morris this 25th day of Dec.
AD 1847

Govt. Notary

State of Illinois - County Court
& Circuit Court thereof Nov. Term
1847

Samuel McKim

vs
Alexander McKim

Action of Slander

Be it remembered
that, on the trial of this cause, the plain-
tiff called to support the issue on his
part the following witnesses - Francis
McWhiteman, Charles Royal, Edmond
Williams & John E. Whiteman and William
Fuller and by them proved in substance
that prior to the commencement of this
suit and after the Fall of 1843, defunct
and upon several occasions had said
of Plaintiff - "He has sworn false and
I can prove it by the Deekets" - that
the words proved were not uttered at the
Sawm of Morris, but at the distance of
ten or twelve miles from said Sawm of
Morris

Upon cross-examination it appeared
that on one or more occasions when said
words were uttered, they had reference to a
certain controversy and suit in the
Circuit Court of the County of Grundy
which the Court Commissioners of said
County had before that time institu-
ted against the said Alexander McKim
in relation to a road - and in

to whether the same was a Cartway or a public highway. The Plaintiff also proved by John Taylor a witness sworn and examined by him, that, in the Spring of the year 1845, at Morris in the County of Grundy, that the Defendant made use of the following words in reference to the Plaintiff - "Mr McKean has sworn to a lie and I can prove it by the dockets or the words Mr McKean has sworn false and I can prove it by the dockets but which of said words witness did not recollect & did not state; said witness stated that the words were spoken in reference to an cattle taken to a bill in Chancery in the case of the County Commissioners against Alexander K Owen and that Depositions were then being taken before Judge H. Keisterd Clerk of the Circuit of said County in said cause - I leave the Plaintiff rested his case

Defendant proved by George Keisterd Clerk of the said Circuit Court, that he had been Clerk of the Circuit Court of said County ever since the year 1843, that he was the officer before whom the depositions were taken as spoken of by the witness Taylor and that said suit was a suit in Chancery and that there had been

no other visit between the same parties, to wit; Mr County Commissioner of Grundy County against May and H. O'Neal in that Court during that time nor since the County was organized - and that at the time of commencing said Chancery suit and the speaking of said words, said McLean was one of the County Commissioners and Bartholomew McGee and Solomon Rutherford, were the other Commissioners. The bill in Chancery and the facts thereto in said cause was then produced before the files of said Clerk's office and identified by said Witnesses - Defendant then offered to read in evidence said bill ^{and Supplement} and the endorsements thereon; which were in the words and figures following to-wit;

The State of Illinois } Grundy County Court
Grundy County } v. O'Neal, after October Term 1843

To the Honorable Richard M.
Young one of the Judges of the
Superior Court, and another and
for said Court sitting as Chan-
cellor

Complaining your Obedient the Co-
mmissioners of said County of
Grundy show unto your Honor that

heretofore at the March Term of your
Orators Court A.D. 1843, one Alexander
H Owen was appointed by your Orators
sitting as a Court, Supervisor of road
district No 2 of said County, and
your Orators further show, that there
was afterwards, to wit, about the 11th day
of September A.D. 1843, paid to the said
Owens, as such Supervisor, of the road
funds of the County, the sum of about
Eight dollars, to be expended by him un-
der the provisions of the Statute in such
case made and provided upon the pub-
lic roads of his said district, and
your Orators further show, that the
said Owens instead of faithfully ex-
pending said money upon said roads
according to the provisions of the
Statute and his duty as Supervisor
fraudulently made contract with
one Henry Brown, & one John Salter
and divers other persons to your Or-
ators unknown, but whose names your
Orators pray the said Owens in his
answer may discover and set forth,
to construct a culvert or bridge, by
each of them, upon a certain Court way
or private road in his said district,
contrary to law, and contracted to pay
them therefor, as your Orators are in-
formed and believe, about three or four

times as much as the said Work was
worth, and has also, as your Orators
are informed and believe, made like
fraudulent & collusive Contracts with
others to your Orators knowledge, but
whom your Orators pray may be dis-
covered and the Contracts or pretended
Contracts with them be discovered and
set aside by the said Orators in his
Answer to this bill. And your Orators
further show that for the reasons here-
inbefore stated, the said Orators was an
or about the twenty fourth day of October
A.D. 1843, removed by your Orators sit-
ting as a Court, from his office of
Supervisor as aforesaid, and the said
Orators notified by your Orators not
to pay over to the persons with whom
he had fraudulently made Contracts
as aforesaid the money so as aforesaid
stated to be in his hand - and the said per-
sons, with whom the said Orators had
made the aforesaid fraudulent Contracts to
were also notified not to proceed in the
execution of them. Yet your Orators
are informed and believe that the said
persons are now proceeding with
the execution of their aforesaid pretended
Contracts, and the said Orators notwithstanding
his removal from the office of
Supervisor and notwithstanding his

Notification aforesaid to the contrary,
threatens to pay over to them the aforesaid
Money so in his hands for their use
under the aforesaid pretended Contracts
- And your Orators fear that, unless
restrained by this Honorable Court
he will entirely squander the same and
the same become thereby nearly lost to
the said County of Shundy.

Your Orators therefore the Petitioners
considered pray your Honor that the
said Defendant may be enjoined by pay-
ing over to the aforesaid persons, or to
any other persons the aforesaid Money
so in his hands until the further order
of this Honorable Court.

That on the final hearing of ^{this} your Orators
Bill the said Court may be decreed
to refund the aforesaid Money to your
Orators or pay the same into the Ex-
chequer Treasury - or in the event of
his having paid over or used the same
or any part thereof he may be decreed
to reimburse the same to the said
Court, and that process of injunction
and summons may issue & also
for such ~~other~~ & further relief as
Equity may require. And your Orators
as in duty bound will ever pray &c

J. C. Chapman

Solicitors for Comptons

State of Illinois }
Grundy County }

Before the Subscribed
Clerk of the Grundy Circuit Court
on this 31st day of October A.D. 1843
personally appeared Bartholomew
McGrath one on the coming summons
shows of said County of Grundy
and made solemn oath that he
had read the foregoing bill read &
that the same was true in substance
& in fact

Upon which said bill are Geo. H. Christy
the following endorsements, to wit: John A

State of Illinois }
Grundy County }

To the Clerk of the
Circuit Court in and for said County
Let the writ of injunction and
summons be issued according to
the prayer of the above petition
Dated Oct. 31st 1843

Walter Robbins Master
in Chancery in and for Grundy
County State of Illinois

State of Illinois }
Grundy County }

Ordered that the bail
in this case on the within petition be
two hundred dollars
Dated October 31st 1843 } Walter Robbins

"Master in Chancery of
S^d Co."

"Filed Oct. 31st 1843

J H Kimsted clk"

to the intro-
duction of which evidence the Plaintiff
objected & the Court sustained the ob-
jection & refused to allow the evidence
to be given - to which decision the Defen-
dant by his Counsel excepted
Defendant then offered to prove that prior
to the speaking of ~~the~~ words to witness
Jahn - that defendant had been informed
that plaintiff had sworn to said bill
in Chancery - and that defendant
then spoke the words - and that in fact
the bill was sworn to by McGrath one
of the other County Commissioners, and
further that the allegations of said
bill were in fact false

So the admission of every part of said ev-
-idence, plaintiff by his Counsel objec-
-ted - the Court sustained the objec-
-tion and the defendant excepted

Defendant further offered to prove
by one Wilson Claypool - that prior
to the time of speaking the words in
the declaration mentioned - it was
generally understood and suspected
in the community where the parties
resided, that the plaintiff had sworn

to said bill and that it was false - to which the plaintiff objected - the Court sustained the objection and excluded said testimony, and the defendant excepted to said decision.

Defendant also offered to prove by Jacob Clayspool a witness produced and sworn in the case - that after the time of the speaking of the words as proved, & before the announcement of this suit - defendant went into the Clerk's office in Morris to examine the records & papers in said Chancery suit - and immediately on coming out of said Clerk's office Defendant stated at a public gathering of people in Morris in Frendy County - that he had just examined the said records & papers - and was astonished to find that McKean had not sworn to said bill at all - but that McSwatte had sworn to the bill - and that up to that time he (Def't) had always supposed McKean (plaintiff) had sworn to the said bill - to the introduction of every part of said offered testimony the plaintiff objected - and the Court sustained the objection, and defendant excepted to said decision.

Defendant proved by several witnesses that they had been well ac-

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- acquainted & familiar with said Defendant during the time of the controversy with McKean about said road and about the duties of said Owens as a Supervisor and had frequently heard him speak freely about the falsehood of said Bill in Chancery - and that they had never heard him charge McKean directly with having sworn falsely - at any time

Defendant proposed to prove by said witnesses that in such conversations he said that he had understood that McKean had sworn to said bill and if he had he had sworn falsely - but the plaintiff objected to proving such declarations of Defendant and the Court excluded the testimony

Defendant proved by Nelson Claypool that he was present at the time of the words proved by Francis Whittemore - and that on that occasion defendant did not use the words attributed to him by Whittemore - but said in substance that the bill in Chancery was false and he could prove it and that he (Defendant) understood that McKean had sworn to it

The plaintiff afterwards examined said Whitted, the Clerk of the Circuit Court and proved that

between the time of filing said bill
in Chancery - and the next succeeding
term of said Court, defendant called
and located at the papers in said Chan-
cery suit, and directed witness to
make a copy of said bill, and
send it to defendant's attorney at
Ottawa by mail - witness did not
know whether defendant read the
bill or Jurat thereto at the time, or
not, but that he the defendant had
the bill in his hand and saw it at
the time

Defendant again offered to read
in evidence said bill in Chancery -
with the ~~the~~ endorsements thereon and the
Jurat thereto, but the plaintiff objec-
ted & the court excluded said ev-
idence (except the Jurat which was
read to the jury) - to which decision
of the Court in refusing to permit
defendant to read in evidence said
bill in Chancery and the endorsements
thereon the defendant excepted

Be it further remembered
that on the trial of this cause the ~~defendant~~
~~and~~ plaintiff asked the Court to
give the following in writing to the
jury viz: "That the place at which
the speaking is charged in the declaration
is immaterial and proof of the words
spoken at another place is sufficient

1 Ind. Plff

to sustain the declaration" which said instruction the Court gave, and the defendant by his counsel excepted to the giving thereof.

The defendant also on said trial asked the Court to give the Jury the following instructions in writing viz:

1st Inst. Deft

"That to maintain this action it is necessary for the plaintiff to prove the words as set forth in the declaration or some portion thereof to have been spoken by the defendant in the town of Morris and that proof of words spoken at the distance of several miles from Morris will not sustain the action."

2nd Inst. Deft

Also, "That if the Jury should think from the evidence that the only words proved to have been spoken in the town of Morris were either "He has sworn false and I can prove it by the Oackets" or "He has sworn to a lie and I can prove it by the Oackets" and that from the evidence it is just as probable that defendant used one of these expressions, as that he used the other, they will find for the Defendant."

3rd Inst. Deft

Also "That Malice is the gist of the action and if the Jury believed from all the evidence that the words were not uttered maliciously, they will find for the Defendant."

Each of which said instructions so
asked for by the defendant, the Court
refused to give. So each of which re-
fusals the defendant then & there excepted
The Court also at the request of
the plaintiff instructed the Jury as
follows

1st Inst. Ref.

1st "That if the Jury believe
from the evidence the words were spoken
by the defendant as charged in the
declaration, the plaintiff is entitled
to recover

2nd Inst. Ref.

2nd "That if the words were spo-
ken as charged and were false in fact
the law presumes them to be malicious"

3rd Inst. Ref.

3rd "That it is not necessary
to prove all the words charged in the
declaration, but proof of any of the
actionable words charged is sufficient
to sustain the declaration"

4th Inst. Ref.

4th "That other words varying
from those stated in the declaration
are evidence to be considered by the
Jury in aggravation of the damages"

5th Inst. Ref.

5th "That it is not necessary
for the plaintiff to prove affirmatively
that he has actually sustained damage
in consequence of the speaking of the

words, but that damage is an inference
of law from the speaking of the words."

And also at the Defendants
request, the Court instructed the Jury
as follows; to wit

1st Inst. Deft

2^d "That proof that De-
fendant said of the Plaintiff - "He swears
to a lie and I can prove it by the Oakeset"
- will not support this action"

3rd Inst. Deft

4th That if the minds of the Jury
equally ballanced - as to whether the defendant
or in talking to Gayles used the words
- "He has sworn false and I can prove
it by the Oakeset" - or the words - "He
swears to a lie and I can prove it by the
Oakeset" - the argument in the Decla-
tion that he said - "He has sworn false & I
can prove it"; is not sustained by
the testimony of said John Salter -

6th Inst. Deft

6th That if the Jury believe that
the Evidence sustains the action - yet
if they believe from the evidence - that the
words proved were uttered under an hon-
est mistake - it is a matter the Jury
will consider in Mitigation of damages

7th Inst. Deft

7th That if the Jury should find
for the plaintiff - they will nevertheless

might all the circumstances in fixing
the amount of the verdict
At the request of the Defendant this bill
of exceptions is signed sealed and made
a part of the record

J D Eaton Seal

State of Illinois
Ernest C. Leary, Clerk
of the Circuit Court in and for said County
hereby certify that the foregoing contains a full true
and correct copy of all the records and proceedings
in said cause

In witness whereof I have hereunto set my hand
Private Seal / the official seal being here pro-
vided for said Court at Morris this 19th day
of December 1848

Ernest C. Leary

22
Grundy, Mo. 1.
2

James C. McLean
Allyson W. Owen

Record - \$10.25

1849

Filed June 8. 1849.
H. L. and Ch.

Prepared

Filed August 13th 1852.
J. L. and Ch.
By J. H. Leland

12071

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of *Grundy* — GREETING :

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Grundy* county, before the Judge thereof, between

James M^c Kean — plaintiff and *Alexander K. Owen*

defendant, it is said manifest error hath intervened, to the injury of the aforesaid

Alexander K. Owen

as we are informed by *his* complaint, and we being willing that error, if any there be, should be corrected in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the *2^d Monday in June* — next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

WITNESS, the HON. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *13th* — day of *August* in the year of our Lord one thousand eight hundred and fifty *two*.

S. Seland Clerk of the Supreme Court.
By *P. W. Seland* Depy. Clk.

Grundy No. 1.
Alexander McOwen
vs.
James M. Kean.
Writ of Error.

Filed August 13th 1852.
J. Island Clk.
By P. H. Island Depy.

STATE OF ILLINOIS, }
Supreme Court.

The People of the State of Illinois,

To the Sheriff of the County of *Grundy* — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of *Grundy* — county, before the Judge thereof, between *James McKeen* plaintiff and *Alexander W. Owen*, defendant,

defendant, it is said that manifest error hath intervened, to the injury of the said

Alexander W. Owen —

as we are informed by *his* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *James McKeen* —

that *he* be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Ottawa, in said state, on the *second* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *James McKeen* — notice, together with this writ.

Witness, the Hon. **SAMUEL H. TREAT**, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *25th* day of *October* in the year of our Lord one thousand eight hundred and fifty *two*.

L. Leland Clerk of the Supreme Court.
By *P. H. Leland* Dpty. Clk.

No. 24.

Alexander R. Owen
vs
James Mc. Kean -

Seize facias.

Served the within writ by reading
it to James Mc. Kean and leaving
a copy with ~~him~~ ^{with him}

12 day of February 1853
James
90 bytes
return
J. D. Jones
Thompson

Filed May 9th 1853.

J. A. Deland Clerk.
By J. H. Deland

Alexander H. Owen. Plff in Error

vs

James McKean Dft in Error

Error to Grundy

The Evidence offered by the Defendant And rejected by the Court below, was clearly inadmissible. It is all of the same Character, And evidently designed to show that the words were spoken by the Dft below under an erroneous impression that they were true. but without taking the trouble to inquire into their truth or falsity. And without attempting to shew any Circumstances Connected with the Plaintiff below, tending in the smallest degree to excuse their publication, or to furnish a pretext for uttering them - Evidence to be received in mitigation of damages, or to rebut the presumption of malice must either shew the general bad Character of the Plff below, Or prove the existence of Circumstances, surrounding the Dft below at the time the words were uttered, which ~~would at once furnish some plausible reason~~ ^{furnish some} ~~as furnished some excuse for their publication~~ ^{excuse for their publication} ~~and proper~~ for speaking the words. Neither the Bill in Chancery offered in evidence nor the Evidence of either of the Claypools, could be received under this general rule,

Dale vs Lyon 10 John R. 447. Rogers vs Cabot 2 Gill 410 - Insan vs Foster 8 Wm. 602. Id. 250 - Anthony vs Stephens 1 Mo. R. 181. Mapes vs Weeks 4 Wm. 662 Harkin on Standen 196 Davis vs Keller 3 Black 488 - Throgmorton vs Davis Et ux Id. 174 Shanty vs Miller 1 Carter 544 -

See also - Scott vs McKimish Et ux. Law Rep. vol. 2 p. 154 - Watson Et ux. vs Moon Id. 36

Hatch vs Potter 2^d Gill 725

Bailey vs Hyde 3^d Com. Rep. 463 -

The ~~General~~ Rule is that General reports of the truth of the matters charged cannot be given in evidence in mitigation of damages unless they be such as to have affected the general character of the Plaintiff - *Luman vs Foster* 8 Wm. 612 *Mapes vs Hicks* 4 Wm 659. *Treat vs Bromm* 4 Conn R. 408. *Lewis vs Miles* 1 Root 346 *Kenny vs Gifford* 19 Wm 296. *Song vs Brigham* 5 Watts 459 *Matson vs Buck* 5 Conn 499. *Kelly vs Cane* 3 Term R. 102 - *Smith vs Buckner* 4 Rawl 195 *Adersman vs French* 1 Pick 1 *Podwell vs Swan* 3 Pick 376. *Walcott vs Hall* 6 Map R. 514

The action for slander is purely personal and the venue transitory. If the words were spoken at any place in the County of Grundy the declaration is sustained by the evidence. The allegation that the words were spoken in the town of Morris is an immaterial allegation & need not have been alleged. It is wholly immaterial at what place in the County of Grundy the words were spoken, the injury being the same at whatever point they were uttered nor can the precise locality be regarded as descriptive of the act complained of. It therefore need not be proved. The instructions of the Court below upon that point are correct. 1st *Grundy vs. 77. N. 41* Ph. R. 236

Hurley vs. Marsh 1 Scan 329

The 1st & 2nd instructions asked for by Dft were therefore properly refused.

The law is well settled that express malice need not be proved in actions for slander, but the words being proved as charged in the declaration malice is presumed to exist and the plaintiff is entitled to recover. In this case there was no evidence tending in any degree to rebut the legal presumption of malice. On the question of malice, the instructions of the Court below are clearly correct.

2^d Ph. Ev. 245 - Gilson vs. Embank

13 Ill. R. 274 -

The 4th instruction asked for by Plff was properly given - It was not necessary to prove all the words charged in the declaration.

Proof of any of the actionable words charged is sufficient to entitle the plaintiff to recover.

Loomis vs. Lorch & Wendell R. 206

Looper vs. Molitor & Mo. R. 134

1st Ph. Ev. 201

The Court will not disturb a verdict even when error appears in the record if there appears to be sufficient legal testimony to support the verdict. And it appears from an inspection of the whole record that substantial justice has been done.

Graham on New Trial, 301

Wheeler vs. Shields, 2^d Green 350 -

Greenup vs. Slater & Gill - 202 -

Instructions

It is not error to refuse an instruction when another is given whereby the party asking it has the full benefit of the law as applicable to the conduct of the parties connected with the transaction.

Prior v. White 12 Ill. R. 261

The Court should refuse an instruction, though it may be strictly a legal proposition, and founded upon the hypothesis that the jury believe certain facts, which may be material to the issue provided no evidence has been offered in support of the supposed state of facts.

Hill v. Ward 2^d Gill. 285

Sup. Court
Chas. H. Owen

James McKean

Owen v McKeen

- Diskey for Jeff Points 1st Mistake in fact & the truth of words in mitigation of damages.
2nd word laid to have been spoken at a particular place must be proved at that place.
- 2 Wharton R. 326-328 Palliatives admitted in mitigation of damages
- 9 Barr R. 313 } Causes, facts and circumstances tending to, or
7 Cow R. 636 } Showing good grounds of belief of the truth of the Jeff's guilt - but showing at the same time his entire innocence, or to be consistent with his innocence - may be given in evidence in mitigation of damages. Not so broad in Cowen 633: 4
- 3 Wend R 396. Approbates this argument in 7 Cow R 636
- 13 Conn R 474: 8 Will ~~not~~ allow such evidence of every thing except justification
- 14 Ohio R. 90 Jeff may prove that Jeff was seen in circumstances which induced the suspicion - but with explanations to show her innocence. Every circumstance, not tending to show a justification - may be given in evidence in mitigation - because they show the true circumstances under which the words were spoken - as to his malice
- 3 Hoarman R 270 } Referred to on same subject.
- 2 Hoile R 510 }
- 3 John R 183 } Cited to show that instruction asked "that if you believe from evidence, words were not spoken maliciously they should find for Jeff" ought to have been given
- 7 Cow R. 636 }

Starbuck for Jeff.

- 3 Bonney R. 463. Evidence offered did not amount to a justification ^{court admitting the rule that} and while facts & circumstances, not amounting to a justification may be admitted in mitigation of damages - yet court distinguished that offered in this case, from the latter rule
- 2 Gilman R. 725. Proof that witness party was in fact, or seemed to be in belief of witness - and had said about same time that he was misunderstood &c. are inadmissible in mitigation

As to particular place of speaking the words.

1 Scam R 329. Annet & Matthey laid to kick the Town of Moulton.

Held that it is sufficient to prove it to have been anywhere in the County

1 Greenly v 77 As to materiality of place of facts. If merely stated as venue it is unimportant & need not be proved - but if descriptive of the act, or offence - then it should be proved.

13 Alls R. 274. Malice is implied from the speaking actionable words &c.

4 Scam R 44 Young v Bennett

Owen v McKean

Wes

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