

No. 13238

Supreme Court of Illinois

Rea

vs.

Durkee

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 271.

1861

STATE OF ILLINOIS—SUPREME COURT,

THIRD GRAND DIVISION—APRIL TERM, 1861.

WILLIAM REA,
vs.
CONRAD DURKEE.

Appeal from Ogle.

This was an appeal from Justice of the Peace, to Circuit Court of Ogle County, brought for goods furnished to the wife of Rea, the appellant.

10 Jury found for plaintiff \$74;61. Motion in arrest of judgment by defendant and for a new trial.

11 Motion overruled by the Court and exception by defendant.

Judgment rendered for \$74,61 and costs. Appeal by defendant below.

EVIDENCE.

12 JOHN VAN HORN.—Knew Durkee; he was a merchant in Ore-
gon; knew Wm. Rea, also knew Mrs. Rea; she bought a bill of
15 goods of Durkee amounting to \$71,61; Durkee knew Rea and Mrs.
Rea.

Cross Examined—At the time the goods were purchased Mrs.
Rea had left her husband and lived in a small house of mine, near
Oregon; she had been there 10 or 12 weeks; she had a small
child; it is difficult to tell whose it is.

16 ASA BURNHAM—I am a physician; knew Rea and Mrs. Rea;
attended her in parturition and she paid me; Rea told me to go
and see her and she would pay me.

17 DANIEL ANDREWS—Mrs. Rea is my mother; we lived at Mr.
18 Ren's one year, two months and one day; they were married in the
spring; mother kept house with Rea's daughter.

- 22 ANDREW EYCHOUR—I know Wm. Rea and wife; saw her at her father's after she left him; Rea came up and asked where she was.

EVIDENCE FOR DEFENDANT.

- 24 MARY JANE REA—I am a daughter of the defendant; I was at the house the day mother left our house; she didn't say where she was going; father was down at Oregon; she took her children away with her; didn't tell me where she was going; some time afterward she returned and said she had put father in jail in Oregon; she
25 she brought a satchel and went to her chest and filled it and took it to the wagon and then went back to the house; father came up from the field and took the satchel out of the wagon and brought it in and requested mother to stay; she said she would not.
27 None of the goods purchased by mother at Durkee's ever came to
28 our house; father had no account at stores; he paid for what he bought.
29 HUGH M. REA—I was at school the day mother left; when she came back afterward, I saw father and her together; he wanted her to come back; she made no complaint of trouble or difficulty.
30 HUGH REA, (brother of defendant)—I went at my brother's request to Mrs. Rea to see if I could induce her to return and live with my brother; she utterly declined so to do; Rea had no running accounts at the stores.

Defendant asked the following instructions.

- 34 1. If the Jury believe from the evidence that the bill of goods for which this action is brought, was purchased from the plaintiff by the wife of the defendant, that in order to justify a recovery, the jury must believe from the evidence that the wife had authority from the defendant to purchase the same, and in arriving at a conclusion; in the absence of express authority on that point, it is proper and legitimate for the jury to take into consideration the proximity of the plaintiff's store, to the residence of the defendant and the position of the defendant's family.

The business character of the defendant, and the manner and course in which the defendant *transacted*, his own business, and the quantity, quality and aptness of the goods, and any and all circumstances that would tend to raise an inference of an implied authority, and in the absence of such conclusion in favor of the plaintiff, the jury must find for the defendant.

- 35 2. That if the jury believe from the evidence that the merchandise for which this action is brought, was sold by the plaintiff to defendant's wife, and at the same time the wife was living apart from the defendant, then an order to justify the plaintiff in recovering, the burden falls upon the plaintiff to prove to the satisfaction of the

jury that the wife left with the consent of her husband, or that his treatment of her was cruel or his conduct so violent as to lead her to fear or apprehend personal violence, and that the evidence offered by the plaintiff of partiality in the treatment of the wife, children, or the treatment of the wife during the confinement, and the quality of provisions furnished by the defendant; detailed in evidence, is not such evidence as will justify the jury in finding that she left for maltreatment or fear of personal violence.

No. 3. That if the jury believe from the evidence that the plaintiff sold the goods sued for, to the defendant's wife while living separate from her husband without his consent, the plaintiff must prove before he can recover, that the wife had just and legal reason and cause to so leave her husband.

36 That the cause that will justify a woman in leaving her husband, must be of the same character which if continued or repeated from time to time for two years, would form a legal ground for a divorce.

No. 5. That no matter what was the care given to Mrs. Rea, in February, during her confinement, if without complaint or objection, she after her recovery, continued to live with her husband and there was no repetition of bad treatment, until the sixth day of the following May, as the law presumes that the offence if there was any was forgiven.

Instruction No. one, the Court gave with the following qualifications. "Unless they believe from the evidence, that the treatment given her by her husband, was improper, and that on account thereof she left him for just cause."

No two, (2) four, (4) and five, (5) the Court refused.

To all of which the defendant then and there excepted.

37 The plaintiff then asked the Court to give the following instructions.

No. 1. That where a wife leaves her husband and resides apart from him, the husband is not liable for goods sold to her, when so living apart from him, unless she left him for good cause.

No. 2. But if the separation was caused by improper treatment on his part, he is liable for her necessary support, and to that extent she has credit in the community to buy on his account.

No. 3. That whether the wife had good cause for leaving the husband, is a matter of fact to be decided by the evidence.

No. 4. That if the Jury believe from the evidence that any witness has testified willfully false to a material fact, the jury will be justified in disregarding the testimony of such witness.

Which were given—

To the giving of which the defendant then and there excepted.

40

ERRORS ASSIGNED.

1. The court erred in admitting improper and incompetent evidence offered by appellees.
2. The court erred in excluding proper and competent evidence offered by defendant below.
3. The court erred in overruling the motion to suppress the testimony of Andrew Eychuer.
4. The court erred in refusing to give the first instruction asked by defendant below, and in qualifying the same, and in giving the same as qualified.
5. The court erred in refusing to give the 2d, 4th, 5th and 6th instructions severally which were asked by the defendant below.
6. The court erred in giving the instructions severally which were asked by the plaintiff below.
- 41 7. The court erred in overruling the motion for a new trial.
8. The court erred in rendering the judgment aforesaid in manner and form aforesaid.

GLOVER, COOK & CAMPBELL.

Wm. Rea. 271
vs

C. Durkee

Abstract

Filed May 2-1861

L. Leland
Clark

GEO. COOK & CAMBELL

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GLOVER, COOK & CAMPBELL.

271
J. W. Red.

vs

C. Durkee.

Abstract

Filed May 2-1861

J. Leland
Clerk



State of Illinois } In the Circuit Court
Ogle County ss } of said Ogle County

Transcript from the files and records
of the Honorable the Circuit Court of Ogle
County in the State of Illinois

Be it known that in a certain cause
recently pending and determined by the
Honorable the Circuit Court of Ogle County
in the State of Illinois wherein Conrad Dur-
ker was Plaintiff and William Rea was De-
fendant the following files and record of
proceedings appear as part of the records
of said Court to wit:

A summons issued by our John M
Smenden Esq a justice of the peace in and for
said Ogle County which is in the words &
figures following to wit:-

State of Illinois } The People of the State of Illinois
Ogle County } to my Constable of said
County Greeting

You are hereby commanded to summon William
Rea to appear before me at my Office in

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Oregon on the fifth day of February next at
 10 o'clock A M to answer the Complaint of
 Conrad Durkee for a failure to pay him a
 certain Demand not exceeding one hundred
 dollars; and there of make due return as the
 Law directs. Given under my hand and seal
 this 25 day of January A D 1859

John M Snowden JP ^{Seal}

Endorsed on back as follows to wit:

Demand	\$99 00
Costs	56

Served the within by reaching in the presence
 and hearing of the within named William
 Bra this 26 day of January 1859

Service	25-
To Mileage	20
	45-

Wm R Buser Constable

Filed Feb 16 1859.

W W Smith Clerk - 3

And further among said files of said Court
 there appears a transcript from the docket
 of the ^{said} John M Snowden Esq which is in the
 words and figures following to wit:

Contract Surree ~~~~~ Before Jno M Snowden
vs ~~~~~ Justice of the Peace
William Rea ~~~~~

Demand

\$99.00

Justices Fees 57 1/4 1859 Jan 25 Summons issued returnable
Feb 5 1859

Const Burr 45 1859 Feb 4 Summons returned served
by Const Burr.

Subpoena on part of Plaintiff issued
Jan 31 1859 and delivered to Const
Seckler

Const Seckler 15 by Const Seckler Service & mileage 40
1859 Feb 5 Case called at 2 o'clock P.M.
Plaintiff declares for goods, wares
& merchandise sold and delivered
as per bill filed. Case continued
by consent until Feb 6 at 10 o'clock
A.M.

Witnesses for Plff. 1859 Feb 6 Examination resumed
John Van Horn & D. L. Dwyer, 100 John Van Horn sworn on part of Plff.
3000 1859 Hugh M Rea Mary Rea and Hugh
5 6000 witnesses Rea sworn on part of defence.

for defence Dwyer 100 After hearing the testimony of parties
Case continued until Wednesday
morning at 9 o'clock for argument.
1859 Feb 9 After hearing the argument

of Counsel in this case it is con-
sidered and adjudged that the
Plaintiff have and recover of the
defendant the sum of Seventy Four
Dollars and sixty cents for his
debt and three dollars and eighty
four cents for his costs in this re-
sult expended as taxed pro
margin and that he have execu-
tion therefor

1859 Feb 16. Appeal taken and bond
filed with James Bea as security
Bond approved

State of Illinois of
Ogle County

I John M Snowden a
Justice of the Peace in and for said County do
certify that the foregoing transcript is truly
copied from the files and books of my office
In witness whereof I have hereunto set my hand
and seal this 16th day of February A.D. 1859

John M Snowden

J.P.

Filed Feb 16 1859

Wm W San. the Clerk

And further among said files of said Court there appears an appeal bond which is in the words and figures following to wit:

Know all Men by these Presents, that we William Bra & James Bra of the County of Ogle and State of Illinois are well and firmly bound unto Conrad Durkee in the penal sum of One hundred and sixty dollars lawful money of the United States for the payment of which well and truly to be made we and ourselves our heirs executors administrators and assigns jointly severally and jointly by the presents.

Now the condition of the above obligation is such that whereas the said Conrad Durkee did on the ninth day of February A.D. 1859 before John M. Snowden a justice of the peace in and for the County aforesaid recover a judgment against the above bounden William Bra for the sum of Seventy four and $\frac{60}{100}$ Dollars and Three and $\frac{84}{100}$ Dollars costs; from which said judgment of said justice the said William Bra has taken an appeal to the Circuit Court of the County aforesaid and State of Illinois. Now if the said William Bra shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by the

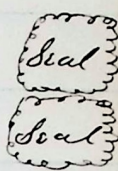
5

6

Court upon ~~the~~ dismissal or trial of said appeal
then the above obligation to be void otherwise to
remain in full force and effect-

William ^{his} X Rea
mark

James Rea



1st
Taken and entered into

before me at my office
this 16th day of February

A.D. 1859

John M. Snowden
J. P.

" Filed Feb 16 1859 "

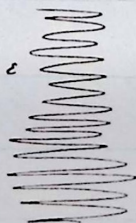
" W. W. Smith Clerk "

And afterwards to wit at the March Term A.D. 1860
of said Court and on Tuesday the 27th
day of said March the same being one of
the days of said March Term the following
proceedings were entered of record in said
cause to wit:

Conrad Clarke

vs

William Rea



Appeal

And now on this day comes
the said Plaintiff by Burckell his Attorney
and the said Defendant comes by Dix his

attorney and to try the issue herein comes The
jurors of a jury good and lawful men to wit
Homer Cochran Samuel S Taylor Henry
Burdick Solomon Shafer John H. Patterson
Benjamin Meyers Elijah O. Baxter Omas Austin
Lewis Kretzinger Maron Lewis George W Mason
and Thomas S. Peck. who being duly elected
tried and sworn. and the hour of adjournment
having arrived the said jury are adjourned to
the opening of Court to morrow morning

And afterwards to wit at the March Term A D 1844
of said Court on Wednesday the 28th day
of March the same being still one of
the day of said March term the follow-
ing proceedings in said cause were
entered of record in said Court to wit.

Counsel Dorkin
vs
William Bra



Appral

This day came the said parties
as heretofore and the jury empanelled were in also
came and the trial proceeds: and the said jury
after hearing the evidence, the argument of counsel
and the instructions of the Court retire to consider
their verdict: and afterwards came into Court and

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state that they are unable to agree upon a verdict
It is therefore ordered by the Court that said
jury be discharged

And afterwards at the June Term A.D. 1844 of said
Court and on Tuesday the 19th day of
said June the same being one of the days
of said June Term the following pro-
ceedings were entered of record in said
Cause in said Court to wit:

Conrad Clarke

vs

William Bea

Appral

Now on this day comes
the said Plaintiff by Burchell and Stutcher his
Attorneys and the said Defendant comes by Mix
his attorney and now to try the issue herein
come the jurors of a jury good and lawful men
to wit: Jonas Wilson James H. McClinton Simon J.
Wilson A. B. Lygster John H. Middlecamp
Benjamin F. March Samuel Patrick M. B. Brier
James Johnston Admiral J. Waite Charles C. Dana
and Lewis Stocking who are duly elected tried
and sworn and now the hour of adjournment
having arrived the said jury are adjourned to the
opening of Court to morrow morning.

And afterwards to wit at the June Term A 1841
of said Court and Wednesday the 20th day
of said June being still one of the days
of the said June Term the following pro-
ceedings in said cause in said Court were
entered of record to wit:

Conrad Durkee
vs
William Bra

Appeal

Now on this day come the
said parties as heretofore and the jury empanelled
herein also come and the trial proceeds and
the said jury after hearing the evidence the argu-
ment of counsel and the instructions of the court
retire to consider their verdict:

And afterward to wit at the June Term last afore
said of said Court on Thursday the 21st
day of said June it still being one of
the days of the said June Term the fol-
lowing proceedings in said Court in said
cause were entered of record to wit:

Conrad Durkee
vs
William Bra

Appeal.

Now on this day come

The said parties as heretofore and the jury empanelled herein also come and say that they find the issues herein for the Plaintiff and assess his damages at Seventy four dollars and sixty cents. Whereupon the said defendant enters his motion in arrest of judgment and for a new trial herein-

And further among the files of said Court in said cause there appears a verdict which is in the words and figures following to wit:-

We the jury in the case of Burke vs Roe find the issues for the Plaintiff and assess his damages at the amount of Seventy four dollars and sixty cents (\$74⁶⁰.)

Charles L Dana

J N Mettlen

A J. Waitt

Simon S Wilson

B F March

John H Middleknap

Jonas Wilson

W B Burr

S L Patrick

James Johnston

Lewis Stocking

A B Bryant

Filed June 21st 1860

W W Smith clk

By J. J. Smith dep

W W Smith

And afterwards to wit at the June Term A.D. 1844
of said Court and Saturday the 23rd
day of said June the same being still
one of the day of the said June Term the
following proceedings in said cause in
said Court were entered of record to wit

Conrad Surber

vs

William Bra

Appeal

This day come the said
parties aforesaid and now comes on to be heard
the motion of the said defendant in arrest of
judgment and for a new trial herein and
after argument of counsel and consideration
by the Court it is ordered that said motion be
overruled to which ruling of the Court the said
defendant then and there excepts. And now it is
ordered that the said Plaintiff have and
recover of the said defendant the said sum of
seventy four Dollars and sixty cents damages aforesaid
so assessed by the jury aforesaid together with
his costs in this behalf expended and that we have
execution therefor. And thereupon the said de-
fendant prays an appeal of this cause to the
Supreme Court which is awarded on his filing
bond herein in the sum of Four hundred dollars

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with James Bra or Hugh Bra as occurring within
 sixty days from this date. And it is further
 ordered that the said defendant's bill of exceptions
 be filed herein by the first day of August next -
 A.D. 1860.

And further among the files of said Court
 in said cause there appears a bill of exceptions
 which is in the words and figures following
 to wit:

State of Illinois ss
 County of Ogle Circuit Court of said
 County of the Term Term
 A.D. 1860.

Conrad Durkee
 vs Appral
 William Bra

Be it remembered that
 on the trial of the above cause to sustain the
 issue on the behalf of the Plaintiff he introduced
 the following witnesses who being severally sworn
 and qualified deposed as follows:

First John Van Horn who being sworn and quali-
 fied testified as follows

I am acquainted with

Mr Durkee I first knew him in Chicago twelve or
 fourteen years ago. I next knew him in Oregon he traded
 here in town. Mr Bra lives three & a half miles from town.
 both lived here at ^{that} time. I never knew of Mr Bra buying
 and selling of Durkee. Durkee left here some three or
 four years ago he lived here some two years, was a
 merchant. I have known him when at Franklin.
 I know Mrs Bra. I do know of her getting goods of
 Durkee. She got a bill of goods amounting to seventy
 four dollars and some odd cents. I have got a bill
 of it if I have not lost it. I should think this
 the same article: got a bill of the goods was here
 presented witness) which was in the words and
 figures following to wit:

To Mr Bra						To Mr Durkee		dollar	
Oct-15 ⁸⁵	To	13 ³ / ₄ yds	Print-	1				1	72
"	"	"	8 "	"	1			1	
"	"	"	5 "	"	1				63
"	"	"	15 "	"	1			1	87
"	"	"	5 "	Chl	2			1	25
"	"	"	5 "	"	1				12
"	"	"	11 "	"	1				138
"	"	"	20	"	1			2	50
"	"	"	14 "	delaine	2			3	50
"	"	"	18 ¹ / ₄ yds	Black Goods	15c			2	27
"	"	"	44 "	Brown	10c			4	40

14

"	"	"	14 "	Dot Flannel	15	2.40
"	"	"	12 "	Sung	2/	3.1
"	"	"	5 lb	Walt yarn	1/	1.88
"	"	"	10 yds	U Casmer	8/	10
"	"	"	2 yds	Solberg Flannel	4/	1.
"	"	"	3	" "	70	2.10
"	"	"	3 pr	Boots	300	9.00
"	"	"	3 yds	Print	1/	.38
"	"	"	1 Pr	Childs Shoes	4	50
"	"	"	1 "	Congress Gators	14/	1.75
"	"	"	4 yds	Silk	1/	5.50
"	"	"	2 1/4 yd	Fringe	10/	2.81
"	"	"	2 1/2 "	"	2/	63
"	"	"	3 "	Drilling	1/	37
"	"	"	2 Lbs	Silk	5	10
"	"	"	2 Sad	Irons	540	1.12
"	"	"	1	Bundle Sticks	3/	38
"	"	"	1/2 lb	Lin Thread	8/	50
"	"	"	18 lb	Sugar		2.00
"	"	"	1 lb	Tea		75

Carried forward

To 3 1/4 lb Caffer

" 1/2 lb Allspice

" 1/2 " pepper

" 5 lb Bats

" 4 Bunches Boots

72 36
 72 36
 1.50

13

12

94

60

74.60

The bill amounted to seventy four dollars and sixty cents. She went down to Franklin with me and my wife, had a child with her. Mr Bra was her husband. The flannel was bought for the child. Durkee knew the woman. Durkee knew Mr Bra. I think Durkee knew Bra in Chicago. The bill of goods amounted to Seventy four ^{and} 60/100 dollars.

On cross examination the witness testified as follows-

At the time the goods were purchased Mrs Bra had left her husband and she lived in a small house of mine near my own. She had four or five children by her first husband Andrews. She had been there ten or twelve weeks. Had a small child at the time. It is fourteen miles from Bra's to Franklin. Durkee had been there one or two years. I know nothing about the bill. Difficult to tell whose child supposed to be Bra's. I know nothing about the but what I heard said. I took her down to Franklin. I never had any difficulty with Bra. One time his dog got after my sheep and ^{the} killed him. We never have had any dealings since.

Ara Burnham being produced and sworn testified as follows

I live in the town of Marion two miles from Bra's. I know Mrs Bra. I am a phys-

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cian. I was employed in a case of parturition
by Mr Bra. I was not at the delivery but immediately
after. I delivered her after birth, we had a
pleasant time I thought she ought to have had
some one to take care of her. Nobody but a girl twelve
or fifteen years old. I do not know how many in
the family. I thought the bed clothes ought to be
changed. I called a week or eight days after.
February 3rd 1858 the child was born. Saw ^{her} a week
or eight days after, she was washing baby clothes.
Mrs Bra paid me, she paid me out of her money.
There was company there. We had tea that night
at about two o'clock. Mr Bra told me to call
on his wife and she would pay me for my services.

Prof. Examination as follows

I have been in
practice eight years. I attended Harvard one
course of lectures. I got there about midnight
stayed until two o'clock I left Mr Garrison
and Mrs Bigal there. I left no instructions in
regard to her treatment. I came next day not
ing will paid about getting bed changed. I think
it should have been done while most physicians
advise it not to be done. It would be injudicious
to lean lines is one spoke of life. I have known them
not to be changed for a few hours a day or two not
more. I saw the first clothes not changed at the

time. A week after I called and found her at
the wash tub ^{washing} & I stayed an half hour. Washing
diapers. This was seven or eight days after her
confinement.

Daniel Andrews being sworn testified as follows
I remember
Mother's being confined. Mrs Bra is my Mother. I
think Mother asked him Bra when he was going
for the Doctor. I did not hear what he answered
I was asleep. Pretty near dark when Mother told
him to go for doctor. I went to bed at nine o'clock
Don't remember what Bra said. Don't remember what
Bra said any thing about it. We had meat bread eggs
and fat pork to eat. Had fat meat & buck wheat
shorts. Shorts cooked in pan cakes meat fried. Had
molasses a little while. Girl hid it under her bed
Mother tasted it once. Sugar kept in pantry locked
up, kept from Mother. Always had flour in the
house - had sugar a part of the time. Had milk
and butter in the summer. Mother did not put
up butter for winter. Never sold butter and knew of
We had four cows. We had potatoes some of the
time they were grow up in the hole and there
was water in the cellar so that the potatoes
could not be kept there. We had left when used
up. We lived at Mr Bra's one year two months and.

and one day. They were married in spring. Had butter
 had hens and eggs had chickens two or three times
 We sold a good many eggs cooked them once in
 two days. Had tea generally. Mother kept house.
 Don't know whether we had coffee or not. Mother
 kept house with his daughter Mary Jane and his
 daughter carried the key much of the time. I
 never knew him to refuse her the key. A jug of
 molasses put under Mother's bed. Mother carried
 it through kitchen in to bed room. Mother when it
 was there. Bed room where girl slept afterwards
 there were eleven small children. Nine that could
 pull the jug over. Mary Jane done the work. The
 other girl nine or ten years old she helped. Sugar
 locked up in his daughters trunk with her
 clothes and doll. When we wanted sugar it was
 got from the trunk. There was flour but we wanted
 to use up the shorts. We had four cows. Mother
 carried key awhile. Girl got it one day. It was
 one $\frac{3}{4}$ miles from our house to school house. Mother
 asked Mary Jane about washing she done so. Buck
 whear flour was not good. His daughter fixed it
 while Mother was sick

Daniel Morrissey being produced & sworn testified
 as follows

I was at Mr Bra's over when they were
 eating. Mr Bra helped the children. His children

got the best. Told Mrs Bra's boys that he never served them the second time. Noticed that their dinners at school that Mrs Bra's children had bread & butter some times & Mrs Bra's children had bread and lard some times. I saw this myself I never told any body of it.

Cross Examination

Sometimes Mrs Bra's children had bread and butter for dinner at school and Mrs Bra's children had bread & lard

Amelia Lyman being produced and sworn testified as follows-

I know the parties I have been there at meal times. I have seen the apple sauce and sugar bowl taken from the table. This was in the middle of December 1857. Mrs Bra was in the room. I do not know whether she directed it or not. The two oldest came to the table and the youngest daughter. His little girls plate was piled the back of that which was taken away. Mrs Bra was present or in the room. I was looking for his children were pushed to the table in preference to mine. I am a sister-in-law of Mrs Bra her first husband was a brother of mine.

a button. I went to the house one other time I was going home saw Mrs Red try to get into the door. she found it locked. she asked what the door was fastened for. I did not hear the reply. She could not get in at the door but went in at the window. She is my sister. When the first conversation occurred was when we were going to leave. He wanted me to ride on the wagon. He then asked me what I was going to do with the children. This was the last of April 1858 about a week before she left. He said said he would not have them there for 2¢ per week and said they were an expense. He said they had property and ought to pay their board. He said if he boarded them he ought to have a price of the new breaking & ought to have control of the place. I was at the sale Red and Reuben Lucas were managing it. The two places were about a half a mile apart. I mean Red's and Andrew's farm. Wilson was on it one year. I mean on Mrs Red's farm. Mr Clark was on it the year they lived together. I did not get the grain from it that year. It was the place I got it for her and for her use. Mr Scoville got the place put in that season. He said he did not want them there and said some thing about new breaking and if he had that he would keep them. A week after that the children came up and guardian was

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appointed on the 4th and she left on 6th of May
1858. Bra never knew any thing about the appointment
of a guardian. I see her go to the house and ask
why the door was fastened. The girl said ask those
that fastened it up.

Andrew Eychaner being produced and sworn testified
as follows

I know William Bra and wife. I know
about the time she left her husband I do not recollect
of seeing her at her house I recollect
of seeing her at her father's house. He came and
wanted to know where she was Bra said he did
not want her but that he had got a thousand
dollars and before the 4th of July he would get
another thousand, he was after property was all
This conversation occurred about two weeks after
Mrs Bra had left her husband. He Bra further
said boys are doing well shooting with a bow and
arrow doing pretty well. He ^{then} asked Dan where his
mother was. Dan said he did not know where she was
This was at Mr Conrad Eychaner's stable

William Clark being produced and sworn testified
as follows.

I know them 3 or 4 years, knows the time
she left. I lived on Blecker's place. I worked her

places the year that Mrs Bra lived with Mr Bra.

John Cummings being produced and sworn testified as follows

I live at Paines Point and have known defendant and wife 14 or fifteen years. I know them when they lived together. I during the spring was there during meal times. I saw Bra at meal time take from the table two of her children and put two of his own up. He did not say a word he put up his youngest girl and boy. Mrs Bra and Mary Jane waited upon the table. Oldest boy was on the machine oldest girl might have brought water. Nothing said he took hold of them harshly.

Lucy J. Cummings being produced and sworn testified as follows

I was present the night Mrs Bra was confined. Mrs Begal and I was there until near day light. I was again there in some two or three days after. She had no girl except the girl about the house. She was not fit for such a case. I do not know after asking Mr Bra for a nurse or making any complaint. Mrs Begal was there. I went as soon as possible. We went in foot. The doctor came soon after. I do not profess to be a midwife I have

24 attended her before I attended her twice before. Mrs
Begal lived a quarter of a mile off.

Eldon and P Sexton being produced & sworn tes-
tified as follows

I know the parties I know
Conrad Durkee & occupied rooms in Ely's Block
I think I have seen Bra buy goods in Durkee's store
I sold some to his first wife they were paid for
at the time.

And The Defendant on his part introduced the
following evidence -

Many Jane Bra being produced & sworn
testified as follows.

I am a daughter of the
Defendant William Bra. I am sixteen years of
age. I was at home the day ^{that} she left our house
she did not say where she was going, father was
down at Oregon when she left. She took her child-
ren away with her. Never heard father say anything
cross or unpleasant to mother, neither did I
ever hear any scolding in the family. When she
went she did not tell me where she was going or
when she would return. She had been away at
other times but did not take all the children.

Mother said at the house when she returned that

father was in jail. This was when she returned to the house the first time and was some time after she first left. Allen & Riley Eychner came with Mother. She brought in a sack and went to her chest filled it & took it to the wagon. She then went back to the house. Father came up from the jail and took the sack out of the wagon and brought it into the house and requested Mother to stay. She said she would not, she gave no reason. Never heard any complaint as to treatment. At the time of the appraisal March Father ask Mother to stay she said she would not. Father had three children and Mother five children. We had no hired man the year Mother was with us Daniel done some. My sister who is ten or eleven years old helped some. The children were all there. I recollect when Mother was confined. The first I know or heard of it Father awoke me. I got up & got supper for them. At the time Allen & Riley Eychner came to the house and Mother with them I did not see them until they stopped she got out and had a sack on her arm. It looked to be empty. She fetched sack into the house. She went to the chest and filled the sack took out ducks and some other things from the chest I believe some flannel brought before she left. I was behind her and saw what she put in the sack. No locks to the doors house except to one outside door. Spring lock that

could be fastened on the inside were on the other doors. After Mother had filled the sack she took it to the wagon, father was planting in the field he came up from the field and brought the sack into the house. Mother was getting her cloths that were hanging up some in the sitting room and bed room. She was in the sitting room at the time father came in. I saw the contents of the sack afterwards. The team went west and were hitched the Mr Eyemonors came back. Allen had a club he was in front of the house. Father was on the inside of the house yard. She stood a little while and went east on foot. Further before she left urged her to stay she said she would not she wanted a divorce. Father wanted her to come home with her family. The next time I saw her she came on foot. She came from Oregon from Probate Court she said she had put Father in jail. I locked the door on the inside with a little key and I got out of the window. I did not want any one to get into the house. I did lock the door to keep her out of the house. She took chairs and pillows. I went down to uncle Johns father had gone to Oregon. This is the time when mother told me she had put father in jail. We had eight cows that season. Set calves have some of the milk. Milked them right in morning until we weaned the calves. Mothers all set down to the table when they could. I never had a truck I had a doll when a little girl it was in

a small box with some other little thing. There was no fastening to it - never was there a lock on it; never put sugar away never carried the key to Mothers chest. I don't believe I ever got any thing out of Mothers chest. She and her boys opened it. Frederick & Daniel might have opened it. Frederick was ten or eleven years old. I did not carry her key. We sold no butter the season Mother was with us, we ate it as fast as we could. We always had flour in the house we had bread and never cake. Father handed Mother his money to keep soon after they were married. Father told Mother ~~to~~ ^{to} pay Mr Bunker that he would call for his pay which ^{Father} ~~she~~ would be five dollars. Father was most always at home. I took eggs to Boyce & Burrows at the Point - father traded there that season. I never took any butter up during 1858 I took up butter in 1859. Mother had the entire charge of the house when well. I followed Mothers instructions. We never had any difficulty. Daniel came to our house and got his clothes and the rest of the children's clothes. He got his money which was in the sack mentioned by Mr Oychamer it was in gold and silver. I never put the jug of molasses under my bed. Annegs have been put out of the way of the children if so mother requested it to be done. None of the goods purchased by Mother at Warkes ever came to our house.

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7
Father never traded at Franklin. He had no account
at stores he paid for what he bought. I done the work
while Mother was sick. She directed I washed second
day after she was confined. My sister helped me
what she could. She was eleven or twelve years old.

Hugh M. Rea being produced & sworn testified as
follows.

I am fourteen years old and am son of the
defendant. Remember when Mother & Father were
sick. I never heard any quarrel or dispute between
them. Mother came to our house on the 4th of April
A.D. 1857. We had seven cows. We were not out of flour
or meat. Had pork beef and fish fall and winter
Had beef salted and smoked. Father bought white
fish by the bag. Always had tea and sugar to use
some times had coffee. Mother always directed about
cooking. Some times had sweet meats, had cakes &
pies pretty often they were made and cared for
by step mother. Never heard any difficulty between
sister and step mother. I remember the night
when Mother was confined. It must have been about
nine o'clock. I slept in the parlor. I heard them
talking father went out. I knew that ~~that~~ she
was sick. I knew that Mrs. Regal & Mrs. Cummings
came and then the doctor came. This was about a
week before mother set up. Never heard mother make
any sort of complaint. Sister had no trunk she had

a box but no key to it. Mother had a red chest; she had a key never knew sister to have the key. The sugar was kept in the pantry. Molasses a good deal of the time on the table. Two or three of mother's children went to school Daniel Frederick and Nathan went to school. Amanda some of the time. Two of my brothers and sisters went in the summer of 1857 with mother's children. Mother put up our dinners. I never knew any difference. I never heard about the butter and lard question until yesterday. When no company was at our house we all sat at the table never noticed or saw any partiality. When we had company my sister or I or some of the others waited. When the Thurners took dinner or I waited I helped stack straw. The day mother left I was at school I did not know of any trouble. I was at home the the last time she came this was some two months before fall. She came on foot father had gone to Maine he came home before she left. I saw them together father wanted her to come back she made no complaint of trouble or difficulty. I was at home when Daniel came for his clothes. We raised potatoes in 1857. We had had some when they came there. In the winter the potatoes froze up and we had water in the cellar so we had no place to put them if we opened the wall only to get out a bag full at a time. At the time the water was in the

cellar the beef and pork barrel were fixed upon a platform out of the water -

Hugh Bea being produced and sworn testified as follows

I am a brother of the defendant I am at his house frequently and was so during the time his present wife lived with him. She managed matters within doors and I without. I see nothing different from any other house. I was there when all the thrashing was done except one day. At dinner the thrashers sat down if there was room we took some little out by his side or on his knee. If any difference we carried one of our little boys more than any other. I think when they were a visiting they took many game and two little children of hers. I never saw any change at table but once. My children James Bea's and others were there and Hugh was requested to take his place first so that he could go and hunt the cows. This was the occasion Cummings spoke of. He got wheat ground by the load and has not been out of flour for fifteen years. He's fish by the keg and groceries by the dollars worth. I went at the defendant's request with my brother James to Mrs Bea to see if I could induce her to return & live with my brother. She utterly declined so to do. I went a second time at my brother's request and she again declined. I never knew

The defendant to trade any at Franklin he had no running accounts at stores. I want to have her come back the 2nd or 3rd day after she left.

Robert Bra being produced & sworn testified as follows

I was there several times some every day some times once in three or four days. As far as I know her treatment was good. His family was well supplied I saw bread flour meat beef pork and fish all or one or the other or both on the table. They had tea three times a day. His children were treated as the rest & I never saw any difference in the treatment of the two sets of children. I have seen him riding along with the youngest boy he carried that more than any of the other children

On cross examination witness stated as follows.

I lived with the defendant over a year & went there frequently on Sunday. There was but one black child with him at my place a little boy. I did not see any one since I came in town I did not know what was wanted of me until I was called on the stand -

Mrs. Huger Bra being produced and sworn testified as follows -

We live two miles from their house and there frequently was well acquainted with Mrs Bra was there at meals as often as once a month.

He treated her well. I never heard a word of complaint against Mr Bra. I always see plenty there. They had in their pantry plenty of meat & fish sugar tea coffee dried apples and rice. I never heard any dictation from Mr Bra. Mrs Bra directed domestic matters. I never heard Mrs Bra complain of Mary Jane only that Mary Jane should be smarter. I have seen to many there for one table. Some of the children waited. I never saw anything that would suggest a discrimination.

Mrs Robert Bra being produced and sworn testified as follows.

I know Mr Bra's wife I have known her for 12 or 14 years I have been to their house some half a dozen times since their marriage had every thing very good, Mrs Bra had control of all these matters all the children were treated well. If any distinction it was given to her youngest boy he was a pet. Had apple sauce goose berries and all the children sat at the second table saw no distinction.

James Bra being produced and sworn testified as follows

I was at William Bras very frequently & his wife was at our house very frequently. I did not see any thing between out ~~side~~ of the way. I never saw any distinction except as to her youngest child he was a girl. Mary Jane acted well was obedient never heard any complaint about family. I never knew of a want of any thing in the family.

Allen Eyckner being recalled testified as follows-

I did not have a club. I did not see William have a club. I think she did sell it butter at Burdys she got into the wagon and went up with me. I saw butter I could not tell what it was in, in June 1857. She came across me a mile from home on foot had eggs in a basket. Had butter in a tin pail. I guess the basket was full of eggs, bought something for herself. I could not say who the clerk was his name was Hunter other people were in the store at the time. I think she was there when Eyckner testified.

The Evidence being closed the defendant entered a motion that the evidence of Andrew Eyckner be not the basis from the consideration of the jury. which motion was overruled with a direction from the Court to the jury that what was detailed by the witnesses as transpiring after Bras and wife separated was not

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to be taken into consideration as a provocation
for her leaving but might be considered by the jury
as tending to show the state of feeling that had
existed at the time of her leaving -

To which ruling the defendant then & there excepted.

And that thereupon the defendant asked the
Court to give the following instructions

No 1

If the jury believe from the evidence that
the bill of goods for which this action is brought
was purchased from the plaintiff by the wife
of the defendant that in order to justify a recovery
the jury must believe from the evidence that the wife
had authority from the defendant to purchase
the same and in arriving at a conclusion in ^{the} absence
of express authority ^{on that point} it is proper and legitimate
for the jury to take into consideration the ~~the~~ prox-
imity of the plaintiffs store to the residence of
the defendant - and the position of the defendant's
family the business character of the defendant
and the manner and course in which the defend-
ant transaction his own business and the quantity
quality and aptness of the goods and any and all
circumstances that would tend to raise an infer-
ence of an implied authority and in the absence
of such conclusion in favor of the plaintiff the
jury must find for the defendant

No 2

That if the jury believe from the evidence that the merchandise for which this action is brought was sold by the plaintiff to the defendant's wife and at the same time the wife was living apart from the defendant then in order to justify the plaintiff in recovering the burden falls upon the plaintiff to prove to the satisfaction of the jury that the wife left with the consent of her husband or that his treatment of her was cruel or his conduct so violent as to lead her to fear or apprehend personal violence and that the evidence offered by the plaintiff of partiality in the treatment of the wife's children or the treatment of the wife during the confinement and the quality of the provision furnished by the defendant detailed in evidence is not such evidence as will justify the jury in finding that she left for maltreatment or fear of personal violence -

No 3

That if the jury believe from the evidence that the Plaintiff sold the goods sued for to the defendant's wife while living separate from her husband without his consent the plaintiff must prove before we can recover that the wife had just & legal reason & cause to so leave her husband -

No 4

That the causes that will justify a woman

36 in leaving her husband must be of ^{the} same character which if continued or repeated from time to time for two years would form a legal ground for a divorce.

No 5. That no matter what was the care given to Mrs Bay in February during her confinement if without complaint or objection. She after her recovery continued to live with her husband & there was no repetition of bad treatment until the sixth day of the following May. as the law presumes that the offence if there was any was forgiven.

No 6. That the quality of the food furnished by the defendant for his family if the same is abundant and wholesome is not a proper cause for justifying the defendant's wife leaving the residence of the defendant.

Instruction No one the Court gave with the following qualification "unless they believe from the evidence that the treatment given her by her husband was improper and that on account thereof she left him for just cause"

No two (2) four (4) & five (5) the Court refused.

No all of which the defendant then & there excepted

Instruction number six was given

The plaintiff then asked the Court to give the following instructions.

- No 1 That where a wife leaves her husband and resides apart from him: the husband is not liable for goods sold to her when so living apart from him unless she left him for good cause -
- No 2 But if the separation was caused by improper treatment on his part he is liable for her necessary support: and to that extent she has credit in the community to buy on his account.
- No 3 That whether the wife had good cause for leaving the husband is a matter of fact to be decided by the evidence
- No 4 That if the jury believe from the evidence that any witness has testified wilfully false to a material fact the jury will be justified in disbelieving the testimony of such witness

Which were given -

To the giving of which the defendant then

and there excepts.

Pliff then asked a further instruction as follows.

That although the wife may be living apart from the husband without good cause yet if at the time of the purchase of the goods for the use of the child such child was of tender age and the care and nursing of the mother was necessary to raise the same, and the husband failed to furnish the same he would be liable for goods bought for the use of such child.

Which was re-
solved.

And the jury having come into Court with a verdict for the Plaintiff in the sum of (\$74.60) Seventy four dollars and sixty cents

The defendant then enters his motion for a new trial which was in the words following to wit:

State of Illinois

Ogle County ss

Circuit Court of said County

Of the June Term A D 1860

Conrad Durkee

vs

William Bra

And the said defendant

comes and enters his motion for a new trial herein and assigns the following grounds for the same

First

That the verdict of the jury in this cause is contrary to the law and evidence.

Second

That the Court erred in not giving the instructions asked by the defendant and in giving those asked by the Plaintiff

Third

That the Court erred in modifying the defendant's No 11 one and adding thereto the following language: "Unless they believe from the evidence that the treatment given her by her husband was improper and ^{that} on account thereof she left him for just cause"

Fourth

That the Court erred in admitting the evidence of Andrew Eyckner against the objections of this defendant.

And for other causes apparent upon the record.

Prayer & Verdict for defendant

And which motion being having been duly argued and considered is overruled and judgment entered upon said verdict.

To all of which the defendant then returns
excepts and prays that this his bill of exceptions
may be signed and made a part of the record
in this cause.

And it is further certified that the foregoing
was all the evidence offered on either side in
this cause

July 31st 1860

John W. Eustace *Eustace*
Judge 2nd J. C.

^{re}
Filed July 31, 1860

M. W. Smith Clerk

And further among the files of said Court
in said cause appears an appeal bond which
is in the words and figures following to wit:

Know all men by these presents, that I
William Bra as ~~as~~ principal and James
Bra as security are well and firmly bound
unto Conrad Durkee in the penal sum of four
hundred dollars lawfull money of the United
States for the payment of which well and truly
to be made we bind ourselves our heirs executors
administrators and assigns jointly severally
and firmly by these presents.

Witness our hands and seals this 28th
day of July A.D. 1860.

The condition of the above
obligation is such that whereas the above named

Conrad Durke did on the 23rd day of June
AD 1860 recover in the Ogle County Circuit
Court in the State of Illinois a judgment
against the above named William Bra for the
sum of Seventy four dollars & sixty cents dam-
ages and costs of suit. From which said judgment
of said Circuit Court the above named William
Bra has prayed an appeal to the Supreme Court
of the State of Illinois. where said appeal was
allowed upon the said bondmen William Bra
executing his bond to the said Conrad Durke
in the penal sum of Four hundred dollars
with James Bra or Hugh Bra as security.

Now if the above bondmen William Bra
shall prosecute his said appeal with effect
and without delay and shall pay whatever
judgments costs interest and damages may be
awarded against him then this obligation shall
be void otherwise to remain in full force and ef-
fect.

William^{is} Bra
guarantor

Approved by me this ~ James Bra

30th day of July AD 1860 ~

M W Smith Clerk ~

Filed July 30th 1860

M W Smith Clerk -

State of Illinois }
County of Ogle ss. } I, Frederick G. Petrie, clerk of
the Circuit Court in and for said
County, do hereby certify, that the foregoing is a true, full
and complete Transcript of the Records and Files of
a certain cause, lately pending in said Court, wherein
Conrad Durkee was Plaintiff, and William Rea was
Defendant, and the whole thereof

Witness my hand and the Seal of our said
Court at Oregon, this 12th day of March
A. D. 1861—

F. G. Petrie clerk
By B. F. Shute Deputy



And now comes the vice appellants
say that in the record & proceedings
aforesaid and in the rendition of the
Judgment aforesaid there is manifest
error in this Court

Errors assigned

- 1 The Court erred in admitting improper
and incompetent evidence offered by
appellants
- 2 The Court erred in excluding ~~my~~ proper
competent evidence offered by defendant below
- 3 The Court erred in overruling the motion to sup-
press the testimony of Andrew Echols
- 4 The Court erred in refusing to give the
first instruction asked by defendant below
and in qualifying the same & in giving
the same as qualified
- 5 The Court erred in refusing to give the
2^d 4th & 5th instructions severally which were
asked by defendant below
- 6 The Court erred in giving the instructions
severally which were asked of plaintiff
below

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The court erred in overruling the motion for
a new trial

The court erred in rendering the judgment
aforesaid in manner aforesaid

Wm. Leach O'Leary

And now comes the said Appeller
and says there is no error in
the record of the proceedings & judgment
aforesaid; and he prays that said judgment
may be affirmed with costs

Wm. Leach O'Leary
Atty for Appeller

271-111

Conrad Durkin

vs
William Bea

Record Books

Filed April 18. 1861
L. Leland
Clerk

2266

Book No. 47
2266