

No. 12110

# Supreme Court of Illinois

Reese.

---

vs.

Herrick.

---

# Supreme Court -

Frederick Bura, Plff. in Error  
vs.

Arthur Hemick, Deft in Error

The Plff. in Error comes  
and assigns the following errors in the record  
in this case -

1. The Court erred in rejecting ev-  
idence offered by Plaintiff.

2. Court erred in overruling mo-  
tion for new trial

3. Court erred in giving instruc-  
tions to jury.

4. Judgment should have been  
for Plaintiff.

For these errors Plff. asks a re-  
versal of judgment as -

Arnold & Lay

And the appellee Anton Weick & Thomas  
W.D. Hoyme his attorneys come and say that there  
are no such errors as are above assigned  
nor any error in the record or proceedings  
in this case & say an affirmation of  
the judgment below.

J.D. Hoyme  
Att'y for Appellee

United States of America  
State of Illinois } S.S.  
County of Cook

Pleas before the Honorable  
John M. Wilson Judge of the Cook County Court of  
Common Pleas within and for the County of Cook  
and State aforesaid at a special term of the Cook  
County Court of Common Pleas begun and held  
at the Court House in the city of Chicago in said  
County in pursuance of an order of the Judge thereof  
and to public notice given in accordance with  
the Statute in such cases made and provided  
on the third Monday being the sixteenth day of May  
in the Year of Our Lord One thousand Eight  
hundred and fifty three and of the Independence  
of the United States the Seventy seventh  
Present the Hon John M. Wilson Judge

Daniel M. Brog Prosecuting Attorney  
Cyrus P. Bradley Sheriff  
Matthew Kimball Clerk

Affert

Be it Remembered that heretofore to wit: On the  
twentieth Seventh day of August in the Year of Our  
Lord One thousand Eight hundred and fifty  
two came Frederick Reese by Arnold & Say his  
attorney and files in the Office of the Clerk of the  
Cook County Court of Common Pleas his declaration  
which said declaration is in words and figures  
as follows to wit:

Cook County Court of Common Pleas

Of the September Term in the Year of  
Our Lord One Thousand eight hundred  
and fifty two.

Cook County, Ill:

Frederick Reese plaintiff, in the suit  
by Arnold & Say his attorneys complains of Arthur  
Huck and William Backus defendants in this  
suit of a plea of trespass on the case.

For that whereas the said defendant Arthur  
Huck, before and at the time of the committing, of  
the grievances herein after next mentioned, was  
possest of a certain public garden, Situate and  
being on a certain Street called Rush Street within  
the Corporate limits of the city of Chicago and  
County of Cook aforesaid, which said Street  
at the time of committing of such grievances,  
and from thence hitherto hath been and still is  
a common public Street and highway for all  
persons, to go return pass and repass in and by and  
along the same at their free will and pleasure  
and was a common thoroughfare through and  
along which persons, at the time of the committing  
of said grievances hereinafter mentioned and long  
before were accustomed to and were constantly  
passing and repassing along the same at their free  
will and pleasure to wit at Chicago aforesaid  
Yet the said defendants well knowing the premises

whilst he the said Anthony Huck was so keeper  
of the said public Garden, and the Keeper and  
proprietor thereof as aforesaid to Wit: On the twen-  
tith day of June in the Year One thousand eight  
hundred and fifty two, and which said day was  
Sunday at the City of Chicago in the County  
of Cook, aforesaid, the said Anthony Huck so being  
such proprietor and Keeper as aforesaid, wrongfully  
unjustly and contrary to the Statute in such case  
made and provided and also in violation of the  
Ordinances of the said City of Chicago, caused  
suffered and permitted, a certain game to be played  
within the said garden and upon his premises with  
a certain large wooden ball in the day aforesaid  
by certain persons, then and there being in the said  
garden, <sup>of the said Huck in that public garden game being kept</sup> that the said defendant William Buckman  
cast and threw the said wooden ball, whilst playing  
such game as aforesaid, and whilst the said  
plaintiff with his wife, Maria Dierks Rees were  
passing along the said highway as aforesaid as they  
had a right to do, so carelessly, negligently, wanton-  
ly, and wrongfully and with the knowledge,  
consent and approval of the said Anthony Huck  
who then and there permitted, aided and abetted  
the throwing of the said ball, that the said ball so  
thrown as aforesaid by the said defendant Buckman  
came over the fence near where the said plaintiff  
and his wife Maria Dierks Rees were passing along

Rush Street a public highway as aforesaid with great force and violence, and the said ball so thrown as aforesaid came upon and struck the said Maria Dierks here upon her head with such force and violence as to break the skull of the said wife of this plaintiff and otherwise greatly injured, bruised cut and wounded her and she was then and there rendered and became senseless and was very sick weak and distempered and remained and continued so weak and distempered for a long space of time to wit: from thence untill the twenty second day of June in the year aforesaid to wit: at Chicago aforesaid during all which time the said plaintiff lost and was deprived of the comfort and society of his said wife, & also her aid and assistance in the management of his domestic affairs which he otherwise would have had and enjoyed and forced & obliged to lay out and expend, and did actually lay out and expend divers sums of money in the whole amounting to a large sum of money to wit the sum of five thousand Dollars in and about the attempting the cure of his said wife and the procuring of necessary surgical attendance, and the necessary assistance and attendance for her during her said sickness, weakness and distemper which ensued in consequence of her being so struck by the said wooden ball so thrown as aforesaid by the said William Dackman, and which continued untill the said 22<sup>d</sup> day of June in the Year

aforesaid. On which said last mentioned day the said Maria Dierks Reue of her said wounds and injuries died to wit: at Chicago aforesaid.

Alamut

And Whereas also the said defendant Arthur Nuck before and at the time of the committing of the grievances hereinafter next mentioned was possessor of a certain garden & premises situate and being on a certain street called Rush Street within the corporate limits of the city of Chicago and County of Cook aforesaid and which said Street at the time of committing such grievances and from thence hitherto hath been, and still is a public Street & highway for all persons to go return, pass and repass in and by and along the same at their free will and pleasure and was a common throughfare through and along which persons at the time of committing of said grievances herein after mentioned and long before were accustomed to and were constantly passing and repassing along the same at their free will and pleasure to wit: at Chicago aforesaid -

Yet the said defendants well knowing the premises & whilst he the said defendant Arthur Nuck was so possessor of the said garden and the Keeper and proprietor thereof as aforesaid to wit: On the twentieth day of June in the Year One thousand eight hundred and fifty two and which said day was Sunday at the City of Chicago in the County of Cook aforesaid

the said Authon Huck so being such proprietor and  
Keeper as aforesaid and having the contrrole and  
Charge thereof, wrongfully, unjustly and contrary to  
the Statute in such case made and provide. Caused  
+ suffered and permitted a certain game to be played  
within the said garden, and upon his premises with  
a certain large wooden ball On the day aforesaid  
by certain persons, then and there being in the said  
garden, and which said game was so played for  
the benefit of the bar of the said Authon Huck then  
there being in & upon said premises and while such  
game was being played in said garden that the  
said defendant William Jackson cast and threw  
the said wooden ball with his hand and arm  
and whilst the said plaintiff with his wife Maria  
Dirks Reese were passing along the said Rush Street  
a public highway as aforesaid as they had a legal  
right to do. So carelessly negligently, wantonly and  
wrongfully and with the approval and permission  
of the said Authon Huck, that the said ball so cast  
and thrown as aforesaid by the said defendant  
Jackson came over the fence by reason of such  
throwing as aforesaid near where the said plaintiff  
and his wife Maria Dirks Reese were passing  
along said Rush Street a public highway as aforesaid  
with great force and violence and the said ball  
so thrown as aforesaid came upon and struck  
the said Maria Dirks Reese the wife of the said

plaintiff upon her head, and with such force and violence as to break, fracture and injure the skull of the said wife, of the said plaintiff and otherwise greatly injured, bruised, cut, and wounded her and she was then and there rendered and became senseless by reason thereof, and was very sick, weak & distempered & remained and continued so weak and distempered for a long space of time to wit, from thence until the twenty second day of June in the Year aforesaid, to wit at Chicago, aforesaid during all which time the said plaintiff lost and was deprived of the comfort, and society of his said wife and also, her aid and assistance in the management of his domestic affairs, which he otherwise would have had and enjoyed, and was forced and obliged to lay out and expend and did actually lay out and expend divers sums of money in the whole amounting to a large sum of money to wit, the sum of five thousand Dollars, in and about the attempting the care of his said wife and the procuring of necessary surgical attendance, and the necessary assistance and attendance for her during her said sickness, weakness and distemper, which ensued in consequence of her being so struck by the said crooked ball so thrown as aforesaid by the said William Jackson and which continued until the said 22<sup>d</sup> day of June in the Year aforesaid on which said

last mentioned day the said Maria Dierks Reese  
of her said wounds and injuries died. to wit: at Chicago  
aforesaid

To the damage of the said plaintiff of five  
thousand Dollars. Therefore he brings suit &c

Arnold & Say

attys for Plffs

Afterwards to wit: On the thirtieth day of March  
in the Year of Our Lord One thousand Eight hundred  
and fifty three came the said defendant Arthur  
Huck by Thomas Hoyne his attorney and filed herein  
his plea which said plea is in words and figures  
as follows to wit:

Cook County Court of Common Pleas.

Arthur Huck impleaded  
with Wm. Duckman

ad

Friederick Reese

} Case

And defendant Huck comes  
by Tho. Hoyne his attorney and defends the  
wrong injury where &c and saith that he is not  
guilty in manner and form as said plff hath  
above thereof in his said declaration complained  
against him of this puts himself in the Country

Hoyne  
for Huck

And the said plaintiff doth the like &c  
Arnold May.

And Afterwards to Wit: On the 26<sup>th</sup> day May  
in the Year of Our Lord One thousand Eight hun  
dred and fifty three. the following proceedings  
were had and entered of Record in said cause  
to Wit:

Frederick Rees

Auton Hick impleaded  
with William Sackman.

( Case

And now upon this day  
comes the said plaintiff by Arnold May his attor  
ney and the said defendant Auton Hick by  
Thomas Hynes his attorney also comes. and issue  
being joined herein it is ordered that a jury come  
and thereupon came the Jurors of a jury of good  
and lawfull men to Wit:

|                |                 |                |
|----------------|-----------------|----------------|
| James Anderson | Joseph Richmond | Stephen Gray   |
| Michael Gentry | Asa Howe        | Wm Adams       |
| Crosby Smith   | J. Quackenbush  | Miriam Joy     |
| A. J. Hayward  | Robert Bradford | William Sawyer |

who being duly elected tried and sworn well  
and truly to try the issue joined as aforesaid. and  
after hearing the testimony on part of the plaintiff

\* Therefore it is considered, that the said Defendant  
Anton Muck implied as aforesaid have incurred  
of the said Plaintiff his Costs and Charges by him  
about his defence in the behalf expended and  
have execution thereon, and therefore the Plaintiff

and after argument of Counsel, the court proceed-  
ed to instruct the Jury on part of the defendant  
to which instruction of the defendant the said  
plaintiff excepts - and thereupon the Jurors before  
retiring from the Bar of the Court say we the Jury  
find the defendant Anton Muck not guilty as  
charged in said plaintiffs declaration, and there-  
upon the said plaintiff enters his motion herein  
for a new trial in this cause, which is Overruled  
by the Court, to which decision of the Court the  
said plaintiff enters his exceptions, and prays  
an appeal to the Supreme Court which is granted  
and the said defendant waives notice of appeal  
and by agreement, the plaintiff is allowed to file  
his appeal in the Supreme Court during the  
second week of the next term thereof.

And Afterwards to wit On the 4<sup>th</sup> day of June  
A.D. 1853. was filed <sup>said caption</sup> in the Office of the Clerk  
of the said Cook County Court of Common  
Pleas a Bill of exceptions. Which said Bill of  
Exceptions is in words and figures as follows  
to wit!

Frederick Jew

<sup>21</sup>  
Arthur Hubt &  
William Backman } Book 60 p

"Be it remembered that  
in the Term of May in the Year of Our Lord One  
thousand Eight hundred and fifty three in the  
Cook County Court of Common Pleas. the said  
plaintiff by Arnold & Lay his attorneys upon the  
trial of the said cause before a jury duly empan-  
-nelled. Chosen and sworn to try the said issue to  
maintain & prove that said issue on his part first  
introduced and read without Objection an Ordinance  
of the City of Chicago - entitled "Of Offences  
against public Morals and Decency"

Section 4

+ If any person shall keep any tippling house  
in the Sabbath day or night. or shall Open any  
bar or place where intoxicating drinks are or may  
be kept or shall sell or retail any intoxicating drink  
on the Sabbath day. or night. or shall keep a com-  
mon illgoverned or disorderly house every such person  
on conviction shall be fined in a sum not Exceeding  
One Hundred dollars nor less than ten dollars.

Sect 5

X If any person shall be guilty of maintaining  
or shall be an inmate of. or in any way. connected  
with. Or in any way contribute to the support  
of any disorderly house or houses of ill fame or  
places for the practice of fornication or knowingly

Own or be interested in as proprietor or landlord of any such house shall on conviction be fined in a sum not exceeding One hundred dollars. And the further sum of One hundred dollars for every twenty four hours. shall be continued after the first conviction. or after any such person shall be ordered by any member of the Common Council. the city Marshall or any police constable or any fire warden to suppress. restrain or discontinue the same.

Sect 8

No person shall keep within said city any billiard table or ball alley under a penalty of <sup>and a further penalty of fifty dollars</sup> five dollars. for every month the same may be continued for ~~use~~ and the Owner or Owners of any building in which such billiard or ball alley is kept. shall be liable to the like penalties as are above prescribed for each offence —

Sect 9

No person shall have keep or permit to be used in any building or place within the city. used occupied or controlled by such person. any E. O. Table. Keno. table. Faro ~~bank~~. Shuffle boards. bag atelle. playing cards. or any other instrument or thing used for gambling whereon. or with which money liquor or other articles shall in any manner be played for. under a fine not exceeding fifty dollars.

Sect 10

If any person shall keep a disorderly or gaming house. Such person or persons. shall for

each and every offence forfeit and pay a penalty of twenty five dollars. for every forty eight hours during which such person or persons shall continue to keep the same after the first conviction for any violation of this Section —

Sect 11

The Mayor or any alderman, the city Marshall or any police constable of this city, may seize or direct to be seized, any instrument device or thing used for the purpose of gaming, or by, on, or with which money or other articles of value may be lost, or won, and all such instruments, devices or things may be demolished or destroyed under the direction of the Mayor. Any person obstructing or resisting the Mayor, alderman, City Marshall or any City Constable in the performance of any act authorized by this or the following Sections shall be fined in a sum not exceeding One hundred dollars —

Frederick Ball

Also being duly sworn. I was present in the garden of defendant Nuck when woman was injured Nuck's garden on north side of the river in the City of Chicago. It was in the afternoon of Sunday about the 26<sup>th</sup> of June 1852. when the woman was injured. They had been playing ball, the ball they played with was a large ball used in ball alley. the man called Packman took the ball and went to playing with it. threw it, and it went over the fence & struck the woman

X I have seen Huck playing ball in the garden  
in an alley where they played at 9 pins - on week  
days. There is no covering over alley. There were three  
or four balls lying then around. Balls were of the  
size of 9 pin alley balls. On Sunday in question  
wife of Plaintiff & Plaintiff with child in his arms  
were walking on east side of garden, on the side  
walk of Ryer Street, a street which runs North &  
South, in the city of Chicago. The ball came over  
the fence from the garden of defendant, & struck  
Plaintiff's wife, on head. She fell down as though she  
was dead. They carried her across the Street into the  
house of Jacob Tunch

Joseph Schlorrick - I was in garden on the Sunday. woman  
was injured about four O'clock in the afternoon  
Huck was behind the bar handing out drinks. Some  
people were in the garden playing ball. The ball  
was thrown from west to East. Two or three were  
then throwing ball. Had seen a good many folks  
playing ball - don't know who threw the ball that  
injured woman. It was Huck ball, a hard  
wood ball of lignumvita about five inches diam  
etc. They were playing at the time with one ball  
Other balls were laying near the ball alley. Two  
or three persons playing with the ball that was  
thrown into the Street. Saw persons playing the  
game several times never knew it to go outside  
of garden before. I have seen ten or fifteen different

X  
companies playing sometimes 3 or 6 in a side or from  
in the alley where they kept balls that ping to throw them at  
the game played that afternoon was to see who  
could throw the ball the highest greatest distance  
the one who throws farthest goes free. who throws  
the shortest distance pay for the drinks. Huck kept  
a public garden, kept all kinds of liquor and beer  
then in bar to sell saw them that afternoon, after  
playing go and drink Huck took the money. Huck  
was then in bar when ball thrown, after inquiry to  
woman. I went to Huck and found him behind  
the counter. I told him to go and get the woman  
into his house. and he said. I have no business at  
there. and he did not go. Music played there that day  
and afternoon in the garden. There was a great  
crowd there

George Collins

X  
called by plaintiff, testified that on the  
Sunday preceding the one in question he passed  
the garden kept by the Defendant. heard music  
looked through cracks in fence. saw crowds of people  
drinking beer & amusing themselves. were playing ball  
then. there was much noise. on his return passing  
down Rush Street, the ball came over fence with  
great violence. if it had struck a person. would  
have broke his Skull. was afraid to pass & waited  
until he heard them throw the ball. & then went  
by as quick as he could. this street was a thorough  
fare

N. Powell Rand  
52110-27  
sworn, testified. I was at Hucks garden on the Sunday

afternoon when woman was hurt. he has kept this garden for 2 or 3 years. (Defendant objects to all testimony of relating to credit of defendant previously to day in question and in relation to said garden previous to said day but was overruled) testimony permitted to go to jury There were a good many playing there when I got there and continued afterwards, and most of the time when I was there. The game was to take the ball, a pine pin alley ball and see who could throw furthest, and the one who threw the shortest distance would have to treat. Huck kept the bar, saw Huck there. Saw him giving out beer to drink sometimes persons went to bar and drink and sometimes it was brought out to those playing. I was there one Sunday about a week or two weeks before when they played the same game as they did on this Sunday. (Objected to as before and Objection Overruled) Huck was there in the Bar on that day, and the door was open. Never knew them to throw ball over fence before this time. I saw a man called Jackman, <sup>but did not know him</sup> take the ball and throw it and went over the fence into the street and heard them cry there is a woman killed went out there and found a woman lying there in street as though dead. She was carried away to Garches house. The ball was thrown towards the East and went right over the fence. doubt know what became of Jackman the man who threw the ball never saw him since. They

Stopped playing then. Saw the woman lying after  
wards lying on bed in Sanchez house

Crop Exp?

Didn't see Huck there when playing Huck could  
nt see him. Mei Reese was not in the garden on that  
day to my knowledge saw Huck that afternoon, Huck  
had an Omnibus carrying people up to the garden  
and back on that day. The man who drove it told  
Huck on that day after woman injured that he  
saw two watchmen taking his ball down towards it  
recollect what Huck said. This ball thrown was just  
like the other that I saw thrown there before. The ball  
laid there on the ground where they played when  
Sackman took it up.

William Saffage

I was at Hucks garden on day when woman  
was injured. I went there about three o'clock saw  
them playing with ball. they played the game there  
by laying a stick on the ground and marking the  
distance to which ball was thrown the one that threw  
the shortest had to pay for the beer. there were many  
hands around the garden who bought beer from  
Hucks bar. They had been playing an hour and a  
half before woman injured. I saw people drinking  
there that afternoon. The ball was thrown from the  
West to East side of garden the ball didn't strike  
anything before it hit woman. Reese had not  
been there that afternoon. I went out and saw a woman  
lying there in the Street. thought she was dead. I  
saw so much blood. and her face black. blood was

on her face and all Over. Some persons carried  
her over to Gauch's house. I saw her again same day  
lying in a bed in Gauch's house. I was in the garden  
again that afternoon. It is a public garden & was  
Kept Open & Beer & Wine sold there

Crop exp<sup>d</sup>

The fellow who threw the ball was a tall big  
Yellow. Not Huck

Deidrick Morig. I was walking on Rush Street on the footpath  
or sidewalk at the time when the woman was injured.  
She was walking going north along Rush Street  
on sidewalk with her husband Mr Reese. He had a  
little child in his arms. She was right behind him  
on the sidewalk. and ball came over the fence  
from Hucks garden and hit her on the head. I  
was about twenty feet off she sunk right down. I  
walked up to her. Saw blood on her head. She was  
just like dead. She was carried across the street. I  
X Saw Mr Huck in the bar in his garden that day. don't  
know whether he was there all time. I have been playing  
there before than myself. playing nine pins. Mrs.  
Huck gave me some beer in the barroom herself on  
that Sunday. I played there at nine pins on week  
days. never saw playing there before on Sunday. Balls  
were nine pin balls. & were kept in alley.

Dr Neurotin Error. I saw a doctor was called to see Mrs Reese.  
about four o'clock in the afternoon. She was at  
Mrs Gauch's house lying on the table & under head

Chew. Skin cut. & bone discovered and visible at point of injury. She had been senseless for two hours, after giving her some restorative. I sent for another Surgeon to assist in performing Operation. we opened the crown of the head or cranium. and found the membrane of brain not broken but distended, and as soon as we opened it a quantity of black blood ran out. the blood was produced by the  of the substance of the brain the bone was cracked. but no piece detached. after the blood ran out she became sensible. She told me I had killed her. The next day she was getting some better and knew everything but not very well. Inflammation of the brain took place on the second day. her breathing was hard on the morning of the third day. accompanied with violent delirium. and she died in the afternoon. upon opening the brain after death found a large cavity in the brain as large as a gopser egg. all the middle part of brain gone. The inflammation caused it to run out. The wound was about one inch and a half ~~long~~ long. bone only cracked extended from  both ways skull was depressed. Dr. Johnson & Dr. Herrick were present and assisted at Operation. The Operation was performed two hours after blow was received. She died on the third day. Visited her about 6 or 7 times Dr. Johnson & Dr. Herrick were there twice.

Jacob Huch sworn testified. I live on Rush Street on the East Side  
from Chicago Avenue. right opposite Hucks garden. I  
have lived there four years. a great many people pass  
along there Sunday. afternoon people pass along there  
for walking & going to church. In the week and during  
weeks. I have seen people playing ball in Hucks garden  
a great many times. but never saw any playing on  
Sunday. have seen Huch playing on week days. The  
game is to make a mark and see who can throw the  
ball farthest. recollect the time when woman was  
hurt. I was in my brewery. I heard a noise and went  
out and looked and saw people jumping over my fence  
I went to house & that mans wife Mr. Hucks wife was in  
my house laid out on the table. I went back into the  
brewery and they laid her on my bed. the bed was  
full of blood. The doctor came pretty soon there Dr  
Kurotin & Dr Herrick. they bore a hole in her head  
to examine. the hole about one inch wide. went  
away couldn't look any longer. the third day she  
died in the forenoon. about 9 o'clock Tuesday  
forenoon she died. She had a child about a year  
old. child couldnt walk.

The plaintiffs counsel then proposed and ask  
ed the witness the following questions

"What expenses were incurred by you in  
taking care of plaintiffs wife after the injury and  
before death

"Do you know the amount of Doctors bill

for her attendance during that period

"Who took care of her untill she died and what if any thing was paid for their services

To the asking of each and every of said questions the said defendant Nuck by his counsel then and there objected, for the reason that sufficient evidence had not been adduced on part of plaintiff to charge the defendant Nuck with any liability

The court then and there refused to allow such questions to be put, to which decision of the judge in sustaining said objections & refusing to allow said questions to be put, the plaintiff by his counsel then and there excepted. & at the time excepted to the decision respecting each of said questions

The plaintiff Counsel then stated that he had further evidence on the subject of damages.

The court then and there <sup>intermeddled</sup> <sup>supplanted</sup> ~~interfered~~ the opinion that defendant was not liable. The above was all the evidence introduced in the case

The court then at the request of the Counsel of the defendant Nuck instructed the Jury as follows

The court will please instruct the Jury that there is no evidence before them tending to prove that the defendant Nuck had any such connection with the game or the throwing of the ball, in which the person who threw the ball which inflicted the injury was engaged as to render the defendant Nuck liable for damages on this action, and they should find the

the defendant not guilty

So the giving of which instruction the said plaintiff by his counsel then & there excepted

The jury there upon under the instruction of the court found a verdict for defendant. Nuck of not guilty

And the said plaintiff by his counsel then & there moved for a new trial for the <sup>following</sup> reasons

1<sup>st</sup> That the instruction as given by the court was contrary to law and evidence

2<sup>d</sup> That the court erred in giving the instruction

3<sup>d</sup> That the court erred in not permitting the questions to be put to witness Sauch

4<sup>th</sup> Because the verdict of the jury was contrary to the law and evidence.

Which said motion for a new trial the court then & there overruled. So which decision of the court the plaintiff by his counsel excepted and prayed and appeal to the Supreme Court and that the court sign this Bill of Exceptions which is done this 4<sup>th</sup> day of June A.D. 1853.

John W. Wilson Seal

State of Illinois }  
County of Cook }

I Walter Kimball Clerk of  
the Cook County Court of Common Pleas. do  
hereby Certify, that the foregoing, is a true and perfect  
copy of the declaration, pleas, orders of court entered  
of Record and Bill of Exceptions in the case of  
Frederick Reese, against Nathan Mack, and  
William Jackson, as appears from Record  
and files of my Office

In Witness Whereof I have hereunto  
set my hand and affixed the  
Seal of said court at Chicago  
the Eleventh day of June A.D.  
1853.

Walter Kimball

Clerk

Dues for Transcript & Certificate Eight  
Dollars paid by Plaintiff

W. Kimball

CLK

53

Frederick Reese  
Arthur Henick  

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Record & Enos

Filed June 14<sup>th</sup> 1853.  
L. Leland Clk.  
By F. K. Leland 1/2.

Rever

Amicks

Worburgh re Mack et al.

Ball playing

1 Cushing R. 453

8 Wend Rep. 587-

610.

10 Wend Rep 654 Giving gun - Ball - Fisher

9 B & C Rep 591 - common

11 Trap. Rep 137-8

2 Young. W. Rep. 622

5 Trap. 341 - Ballown case 19 John R. 381

382.

~~7 Com. 735~~

~~19 Dr. 387~~

acting in concert, fixes the  
liability -

4 B. & C. 226

Wend. & Cushing  
liability for injury

Squire case. 2 Black Rep. 892

aperting to a Yussup by another. Coupled  
with an intent in it. Make all jointly

guilty -

Yussups having  
a joint road - or

10 Wend. Rep. 656

657-

House in common

Sufficient to connect

House -

\* ~~Was the game,~~

1. If Hicks - connected with game - is he  
liable?

2. Was there evidence tending to show  
that Hicks was connected with  
game -

3. If so - Had we not a right to  
have the question submitted to  
the jury?

There are two principles on which  
this <sup>kind of</sup> liability is established

1. By his apart & connection  
with game -

2. On ground of negligence -

dangerous game -

near - highway -

negligent in providing  
proper security -

Case of shooting game -

Reed

Quick

Bruff

Quintus is most  
of letters - Jeff. Williams  
Wrote from Maranto  
a very - long - was  
then much extending  
to establish it -

13 Lbs R. 28  
613.

11. 8 lbs R. 285

10 Chilly 79-80

17 8 lbs 562

2 8 lbs 21

R. 221

Note 3 -

Much of water

STATE OF ILLINOIS,

Supreme Court,

ss.

The People of the State of Illinois,

To the Clerk of the ~~Circuit Court~~ <sup>Cook County Court of Common Pleas</sup> for the county of ~~Cook~~ <sup>Cook</sup> Greeting:

**BECAUSE** in the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~circuit~~ <sup>said</sup> court of ~~Cook~~ <sup>Cook</sup> county, before the Judge thereof, between ~~Anton Hreck vs. Fredrick Ruse~~ <sup>Anton Hreck vs. Fredrick Ruse</sup>

plaintiff, and ~~Anton Hreck vs. Fredrick Ruse~~ <sup>Anton Hreck vs. Fredrick Ruse</sup>.

defendant it is said manifest error hath intervened, to the injury of the aforesaid ~~Ruse~~ <sup>Ruse</sup>

as we are informed by ~~his~~ <sup>his</sup> complaint, and we being willing that error, should be corrected if any there be 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 ~~22 Monday in June inst.~~ <sup>22 Monday in June inst.</sup>, 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 ~~14~~ <sup>14</sup> day of ~~June~~ <sup>June</sup>  
in the Year of Our Lord One Thousand Eight Hundred and Fifty-~~three~~ <sup>three</sup>.

*Helena Clark*

Clerk of the Supreme Court.

53  
Russ vs Henck  
Writ of Habeas

Filed June 14, 1853,  
S. C. Ct.

RECEIVED BY THE CLERK OF THE COURT

In Supreme Court at

Ottawa. June Term 1853.

William Jackson impleaded

with Arthur Hick

ad.

William Reece

Deft Berjis Error.

by appeal from Court & Court  
of Common Pleas -

The Action below in trespass  
on the case, defendant Hick only being served - it appeared that  
on the Sunday in question to wit the 21<sup>st</sup> Jan 1852. Deft open  
a Public Garden in the City of Chicago, where the defendant  
Jackson was engaged in playing Ball - but that through his  
carelessness & ~~misadventure~~ misadventure the Ball went over  
the fences of Hick - into the adjoining street and  
fell upon the head of Peff, who then passing by, ~~and~~  
when it struck her to the earth. and that in consequence  
she was so wounded that on the Tuesday following 22<sup>nd</sup> Jan  
she died. The Peffs etc, to recover his personal loss of  
the wife, society, during the interim between the accident  
her death & the medical expenses attending her  
last sickness -

The Court below without some further evidence  
showing Hick's participation in the act - some act  
concert with him in the game played - or some further  
participation or encouragement than keeping the garden  
open on Sunday, instructed the Jury that ~~they~~  
he was not liable & refused to allow any evidence of  
damages - to go to the Jury -

Two questions arise upon this Point.

There is no connection shown between the defendant and the injury committed. The injury was the consequence of an act done by a third person, not of defendant who merely kept the premises from which the adverse tortfeasor threw or let slip the Ball.

There is only one class of cases, - where a Third or Ready Party can be made liable who neither committed the act himself, or <sup>expressly</sup> ~~expressly~~ consented to its commission - these are cases 1 East Rep. 92. when the master is responsible for acts of the servant in the course of his employment and the Husband is made responsible for the torts of the Wife because supposed to be done under his control - \* When several ~~are~~ jointly ~~severally~~ <sup>jointly</sup> ~~severally~~ <sup>severally</sup> it may appear unnecessary to say, that if a person does not assist in a Turpiss either in word or deed he is not liable though the act is done by one assuming to act in his behalf.

Chitty Page 92 -  
S. B. Monro - p 483  
Broom on Parties to actions 171.

But a Party is not liable for the acts of another unless the latter acted as his servant at the time when the injury was committed -

Myth v. Milcox  
19. Wendell - 344.

Chitty Occurring P. 92  
1 East Rep. - P. 106.

The rule in actions ex delicto is, that the Party committing the tortious act or asserting an adverse title must be made defendant, or the wrongful occupant of land in action of trespass the party guilty of a commission in favour of a mortgagee in an action on the case -

Pratt v. Pugh - 246 - P. 171

\* The reason in the case of servants & agents is alleged to be that they stand in a ready, as to injury, done them - the master's action is maintained and in this case Piggott also made a defendant & liable.

2<sup>nd</sup>

It was not the act of Huck in keeping open a Public Garden that occasioned the injury - nor was it an efficient <sup>act</sup> of itself to produce such an injury: But the injury resulted as a direct consequence from the acts of a third person - acting independently of Huck as a free agent. Responsible to the Plff. for his improper conduct, negligence, or torts - and whose acts Huck had no connection

The damages therefore sought to be proven as against deft Huck, was not a natural proximate consequence of the acts complained of <sup>participation in the</sup> ~~act of throwing the Bull~~ <sup>was not participated in by Huck and</sup> ~~the act of keeping open~~ <sup>on Sunday when</sup> a Public Garden where it was played - <sup>are not reasonably</sup> ~~the damage~~ <sup>therefore</sup> too remote from the acts complained of to be charged upon deft -

It is well laid down The rule is well laid down in <sup>2</sup>Greenleaf 5.256 - Page 289. The damages to be recovered must always be the "natural proximate consequence of the act complained of -

2 Greenleaf. 5. 256 -

6 Hill 524 - 2 Hill 314

<sup>However</sup> <sup>19 Johns 282</sup> they must appear to be the legal & natural consequences of the act arising from the tort and not from the wrong of a third person induced thereby.

5 B. & Ald 645. It has been thought that

5 B. & A. 645 damages must be always considered too remote  
1 Smith's Leading case 266. for that the Law will not esteem it natural that  
19 Whar. 382 an illegal act should be induced by any consideration.

5 B. & A. 645.

1 Smith's leading case 266.

2 ibid. " " 384

7 Brough - 211 -

8 East

{ Guelle v. Swan -  
19 Whar 282 }

7 Brough In 7 Brougham 211. Mars & Meats. In this case the Deft  
P. 11. & has repeated a slander of the Pff, which one Bryce has commu-  
nicated to Bryce who has refused or consigned to sell the  
Pff ~~some~~ certain goods - But Court held that they must  
must be taken to answer for the consequences of his own  
& wrongful acts - they say that the conduct of Bryce was  
the voluntary act of a free agent on whom defendant had  
no control. & for whose acts he is not answerable that  
was the immediate cause of Pff's damage -

6 Hill

But the language of Nelson in Bain

P. 523

As Petrie is still stronger - To maintain a claim  
for special damages they must appear to be the  
legal & natural consequence of arising from the tort -  
not from the wrongful act of a third person induced  
thereby. In other words the Court say - the damages  
must proceed wholly & exclusively from the injury  
complained of -

In another case recently tried in New  
York. Reported. 13 Barlow. Sup Ct Rep. 657.

a case having some analogy to the present one - Action  
12 Bardon was brought by the husband - to recover for damages which  
they say, it, he had sustained for medical attendance on wife, who had  
Page 657, was injured by the repetition of slanderous words originally  
uttered in absence of defendant, but repeated by another person in his  
presence - -

Law Magazine } The Court say that - "Defendant cannot be made  
P. 346 } accountable for the unauthorized illegal acts of other  
persons, although his own conduct may have indirectly  
induced or incited the commission of the acts.  
"A man by doing one thing, does not thereby render  
himself accountable for the independent wrongs of  
others. - The Plaintiff in this case was nonsuited  
because he gave no proof showing any connection  
relation between the injury complained of and the  
acts of defendant's work -

An Article in the Jan 10 of London  
Law Magazine has done great justice to this much abused  
subject of damages -

He dwells upon the meaning of the term "natural  
Law of consequence" - Loss must follow the wrong by the  
Law Magazine Ordinary Law of nature and human conduct and  
P. 11 - not result from it, as a strange coincidence or an  
unprecedented twist of affairs - Page 11 -  
And on Page 12 - The loss is not the natural  
consequence of the wrong unless the wrong was  
efficient by itself to produce the loss -

It is proper for the Court in this case to -  
instruct the Jury as he did that def's connection  
not being shown he was not liable -

In cases where the Court would  
have been obliged to set aside the verdict  
in case where no evidence was introduced  
proper to sustain the declaration a charge  
it is proper to order a nonsuit -

1 Wendell 376.

6 ibid - 436.

14 ibid - 146.

16 ibid - 529 -

9 Mc one who upon digging a foundation upon his own ground or excavates  
U.S. Digged the earth & remains the full of <sup>the wall of</sup> ground is not responsible for the loss

P. 13 - unless it can reasonably be shown that such would be the effect of the  
act & he failed to approve the same.

Sturges v. Stokes. 8 B. Mon. 433

The action in the case does not proceed  
upon any principle of liability different from that  
which regulates the liability of persons in the form  
of action - It lies where a party sues for damage

for any wrong or cause of complaint to which  
assault or trespass would not apply

5. Petition of right 133

Stephen vs. Plady 15

3. Wrotham - 88

The ~~difference~~ distinction between an injury  
by violence or without force -

Supreme Court Ill  
Ollawa

Huck employed &c.  
Jackson

53 - - ans -

William Reese -

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Brief -

Th. Hoynes  
For defenses

53

Frederick Reese

vs

Arthur Hassick

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53

Refused

12410