

13029

No. _____

Supreme Court of Illinois

Hicks

vs.

Rising

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 242.

Huckes Rising
Hicks
vs

Rising
Separate

13029

STATE OF ILLINOIS---THIRD GRAND DIVISION.

Supreme Court thereof, April term, 1880.

THOMAS HICKS,

vs.

ANSON RISING. }

BRIEF OF APPELLANT.

The only point we desire to urge is, that the Court erred in excluding the evidence of Marvin and Platt. This evidence was clearly material, and ought to have been admitted to go to the jury. If the matter sworn to by Rising in the case of the Trustees of the Town of Warren vs. Platt was material to the issue in that cause, then the evidence of the witnesses in the slander suit in relation to what Rising's evidence was and that it was untrue, tended to show that Rising had committed perjury, and was, of course, proper under the pleas of justification. If, on the contrary, the evidence of Rising in the case of the Trustees vs. Platt was not material to the issue, then, under the general issue, the evidence was competent and proper to disprove the allegation that the defendant in the slander suit intended to charge that Rising had committed perjury. As there seems to be no conflict of authority on this subject, it is deemed unnecessary to cite any except the case of Darling vs. Banks, 14 Ill., 46, and the authorities therein cited. The appellant was thus deprived of his right to disprove the allegation of the first four counts, that he intended to charge Rising with having committed perjury. The very fact that under a good plea of justification to the first four counts, proof that the plaintiff below had willfully, corruptly and falsely sworn to a matter not material to the issue would not be admissible, is a strong reason why such proof should be admitted under the general issue, otherwise it could not have been proved at all by the defendant below, if the declaration had contained only the first four counts. We insist, also, that under the fifth count, which alleges only that Hicks charged Rising with false swearing, it was competent for Hicks to prove that Rising did swear falsely, although his evidence may not have been material to the issue.

It is true that when the plaintiff in the slander suit alleges that the defendant has accused him of perjury, the justification must be as broad as the charge, and a plea that the defendant swore falsely would not be a good justification. Yet it would seem that if the plaintiff alleged that the defendant had charged that the plaintiff had sworn falsely, it would be no objection that the justification was *broad* *than the charge*. The greater would include the less, and that part of the plea which alleges that the false swearing amounted to perjury, would be merely surplusage. Would it have made the plea of justification as applicable to the first four counts any worse as a plea, if it had contained a statement that Rising feloniously stole, took and carried away a horse? This would not, we conceive, have injured the plea.

LELAND & LELAND, for Appellant.

247-178
Heicks vs Rising

Brief of Apple

Filed May 12th 1860
L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

THOMAS HICKS }
vs. } *Appeal from Lec.*
ANSON RISING. }

BRIEF OF APPELLEE.

The speaking of the words was sufficiently proven.

2 Greenl. on Ev. 414.
Miller vs. Miller, 8 Johns. R. 74.
Whiting vs. Smith, 13 Pickering, 364.

Proof of the speaking of either set of the slanderous words charged sufficient.

2 East. R. 434.
2 Greenl. on Ev. 414.
9 Ala. R. 266.
8 Blackf. R. 462.

When the words in themselves are actionable, the law implies malice, and special malice need not be proved.

3 Greenl. on Ev., § 418.
Starkie on Slander, 47, 53.
Bodwell vs. Osgood, 3 Pick. 379, 384.
20 Ill. R. 116, *Hosley vs. Brooks*.

Heat of passion does not rebut presumption of malice.

Hosley vs. Brooks, 20 Ill. 116.

Conduct and statements of defendant, either before or after the slander, may be given in evidence to show malicious intent.

2 Greenl. Ev., § 418.

Character of plaintiff may be given in evidence, to rebut presumption of crime.

2 Greenl. Ev., § 426.
Harding vs. Burks, 5 Pick. 244.

After foundation is laid, witness may be asked what he understood by the words spoken.

2 Greenl. Ev. 409, note 1.

It is said that the Court erred in excluding the evidence of Marvin, Platt, and Dobler. My answer to this is, that the evidence sought to be given was wholly immaterial. The suit in the Circuit Court in which the perjury is alledged to have been committed, was for a violation of an ordinance of the town of Warren. The allegation is, that in that suit Rising committed perjury, in testifying that the polls in the town of Warren closed at 5 o'clock instead of 4. Whether they closed at 4 or 5 was wholly immaterial in that suit, and Rising could not commit perjury in swearing one way or the other.

An irregularity in the election of trustees would not avoid an ordinance of the town. The ordinance would be just as valid whether the polls were closed at 4 or 5 o'clock.

Town of Mendota vs. Thompson, 20 Ill. 197.
U. S. Bank vs. Dandridge, 12 Wheaton, 64.
Dunning vs. New Albany R. R., 1 Carter, 437.
Society of Middlesex vs. Davis, 2 Metc. 133.
House vs. House, 5 Harris & John. 125.

Before this Court can say that the Court below erred in refusing to admit that testimony, the record must show not only that the testimony may have been competent, but that it was competent; not only that the question whether the polls closed at 4 or 5 o'clock may possibly have been a material one in a suit upon the ordinance, but that it necessarily was material.

Hough vs. Baldwin, 16 Ill. 293.
Miller vs. Metzger, 16 Ill. 390.

Some of the counts of declaration have a colloquium, averring that the evidence of plaintiff was material, others not, as to whether that colloquium must be proven as laid.

Vaughn vs. Haven, 8 John. R. 109.
Niven vs. Mecn, 13 John. R. 48.
Hopkins vs. Beade, 1 Caine's Cases, 347.
Ward vs. Clark, 2 John. R. 10.
Harvey vs. Boies, 1 Penn. R. 12.
Sanderson vs. Hubbard, 14 Vermont R. 462.
Wood vs. Scott, 13 Vt. 42.

When plea is pleaded that plaintiff did perjure himself, it cures defect in colloquium.

Vaughn vs. Havens, 8 Johns. R. 109.
Drake vs. Corduroy, Crown Cases, 288.

We can perceive no objection to the manner in which the depositions are certified.

GLOVER, COOK & CAMPBELL.

242-178
Hicks
or
Rising

affidavits
Brief

Filed May 25th 1860
L. Leland
Clerk

polls have closed at 4 or 5 o'clock.
notice of the town. The ordinance
in paragraph in the election to

was material.
been a material one in a suit upon the ordinance but that it necessarily
question whether the polls closed at 4 or 5 o'clock may possibly have
may have been competent but that it was competent; not only that the
inquiry that testimony, the record must show not only that the testimony
before the Court can say that the Court below erred in refusing to

There is no material to the fact
There is no material to the fact

themselves must be proven as fact.

existence of plaintiff was material, others not as to whether that could
points of the counts of declaration have a collateral arising due the

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in collateral.
It has been held that plaintiff in pleading himself it does not

There is no material to the fact
There is no material to the fact

the plaintiff.
It can be taken in objection to the manner in which the declaration

GLOVER, COOK & CAMERON
There is no material to the fact
There is no material to the fact

State of Illinois
In Danies County

Thomas Hicks of said
County having first been duly sworn
according to Law, says, that he is the
defendant in a certain suit at Law
commenced in said Jo Danies County
and taken by change of venue to Stephenson
County, & thence to Lee County in said
State, in which Arison Rising is the
plaintiff: that said suit was tried
in said Lee County at the May
Term, A.D. 1859 of the Circuit Court of
said Lee County & a judgment was
rendered against this affiant, from
which judgment affiant has taken
an appeal to the Supreme Court of
this State & which appeal is now
pending in said Supreme Court in
said State -

Said affiant further states, that on
the trial of said suit in said Lee
County Circuit Court, this affiant offered
in evidence on his defense in said
suit the Record of the suit of the
President & Trustees of the Town of Mazon
in Jo Danies County Illinois v John D
Platt & that the same was received
in evidence on said trial in Lee
County: that said Record was
left by the counsel of affiant amongst
the papers in said suit of Arison
Rising against affiant in the

case of the Clerk of said Lee County Circuit Court; but that the said Record was abstracted & taken away from said office by one Thomas C. Champion Esq who was one of the counsel for said Anson Rising in the trial of said suit in said Lee County Circuit Court; and that said Champion never returned said Record to said Clerk, & therefore the same could not be incorporated into the Bill of Exceptions in said Appeal case.

Affiant further states that said suit of said Anson Rising against affiant, was an action on the case for slander & was commenced in the Circuit Court of said Jo Daviess County, & is the only suit ever had between said parties.

Sworn to & subscribed }
Before me this 13th day }
of April A.D. 1860 }
Thos. H. Garner J.P.

Thos. Hicks

STATE OF ILLINOIS, } ss.
JO DAVIESS COUNTY.

I, RICHARD SEAL, Clerk of the County Court, in and for said County, do hereby certify that Thomas C. Champion Esq., whose name appears subscribed to the foregoing and annexed instrument, is now, and was at the time of subscribing the same, an acting Justice of the Peace in and for said County, regularly commissioned and qualified, and that as such Justice, full faith and credit is due to all his official acts. And that I am well acquainted with his hand writing, and verily believe his name subscribed thereto to be genuine. And further that the annexed said instrument is executed in due form, according to the Laws of the State of Illinois.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the said Court, at Galena, this 14th day of April 1860

ATTEST;

Richard Seal

Clerk.

242-178
Hicks no Rising

Appl to continue

Filed April 18, 1860
L. Leland
Clerk

STATE OF ILLINOIS---THIRD GRAND DIVISION.

Supreme Court thereof, April term, 1860.

THOMAS HICKS,

vs.

ANSON RISING. }

BRIEF OF APPELLANT.

The only point we desire to urge is, that the Court erred in excluding the evidence of Marvin and Platt. This evidence was clearly material, and ought to have been admitted to go to the jury. If the matter sworn to by Rising in the case of the Trustees of the Town of Warren vs. Platt was material to the issue in that cause, then the evidence of the witnesses in the slander suit in relation to what Rising's evidence was and that it was untrue, tended to show that Rising had committed perjury, and was, of course, proper under the 'pleas of justification. If, on the contrary, the evidence of Rising in the case of the Trustees vs. Platt was not material to the issue, then, under the general issue, the evidence was competent and proper to disprove the allegation that the defendant in the slander suit intended to charge that Rising had committed perjury. As there seems to be no conflict of authority on this subject, it is deemed unnecessary to cite any except the case of Darling vs. Banks, 14 Ill., 46, and the authorities therein cited. The appellant was thus deprived of his right to disprove the allegation of the first four counts, that he intended to charge Rising with having committed perjury. The very fact that under a good plea of justification to the first four counts, proof that the plaintiff below had willfully, corruptly and falsely sworn to a matter not material to the issue would not be admissible, is a strong reason why such proof should be admitted under the general issue, otherwise it could not have been proved at all by the defendant below, if the declaration had contained only the first four counts. We insist, also, that under the fifth count, which alleges only that Hicks charged Rising with false swearing, it was competent for Hicks to prove that Rising did swear falsely, although his evidence may not have been material to the issue.

It is true that when the plaintiff in the slander suit alleges that the defendant has accused him of perjury, the justification must be as broad as the charge, and a plea that the defendant swore falsely would not be a good justification. Yet it would seem that if the plaintiff alleged that the defendant had charged that the plaintiff had sworn falsely, it would be no objection that the justification was *broad* *than the charge*. The greater would include the less, and that part of the plea which alleges that the false swearing amounted to perjury, would be merely surplusage. Would it have made the plea of justification as applicable to the first four counts any worse as a plea, if it had contained a statement that Rising feloniously stole, took and carried away a horse? This would not, we conceive, have injured the plea.

LELAND & LELAND, for Appellant.

242
Hicks vs Rising

Brief of applt

Filed May 1st 1880
L. Leland
Clerk

State of Illinois
Jo Daviess County
Fourteenth Judicial Circuit

Pleas in The Circuit Court
begun and held within and for said County
of Jo Daviess on the third Monday in the month
of October A.D. 1857 before The Hon^{ble} Benjamin
R. Sheldon Judge of the fourteenth Judicial
Circuit of the State of Illinois

W. R. Rowley Clerk.

S. K. Miner Sheriff.

U. D. Meacham Prosecuting Attorney

The President & Trustees
of the Town of Warren

Appeal in

vs
John D. Platt

Be it remembered
that heretofore to wit on
29th day of August A.D. 1857 James Medda-
ugh a Justice of the Peace in and for said
County filed in the office of the Clerk of
The Circuit Court in & for said County
a Transcript and appeal Bonds in the
above entitled Cause. Which said Transcript
is in the words and figures following
to wit

The President On an action of debt for five dollars ^{summons}
 & Trustees of the issued from J. D. Parks on the 18th day
 Town of Warren of June 1857 returnable on the 25. day
 no of June 1857. at 9 O'clock A.M. a. Subpoena
 John D. Platt Issued on part of Plaintiff summons
 returned served the within summons
 by reading the within named John D. Platt
 this 20th day of June 1857

J. D. Thornton Const.
 Parties appeared at the time set for trial.
 Suit was called by the Court. John D. Parks
 A Motion was made by defendant
 for want of Jurisdiction. Which was over-
 ruled by the Court. Defendant moved
 for a change of venue. Defendant making
 the oath required, it was granted to
 James Middough J.P. Said suit was
 called by the Court James Middough
 The same Motion made for want of
 Jurisdiction. Which was overruled.
 Defendant called for a jury which
 was impaneled. A Record was offered
 to the jury as evidence, rejected.
 The Cause was submitted to the jury
 which verdict was as follows
 We the Jury have agreed to render a
 verdict for the in favor of the Defendant.
 It is therefore considered by the
 Court that judgment be rendered

Justice's Costs	56¢
Middough	1.56
Const Parks	1.00
Thornton	1.30
Witness fees	2.00
Amors	3.00
	<u>\$6.42</u>
	9.42

against plaintiffs for costs of suit
James Middough
Justice Peace

State of Illinois
In Daviess County
I James Middough a
Justice of the peace in and
for said County do certify that the foregoing
transcript is truly copied from the files &
Books of my office. In witness thereof I have
hereunto set my hand this 2nd day of
June A D 1857.

James Middough, J.P.

Endorsed

Filed Aug 29th 1857

J. R. Rowley clk

The appeal Bond brought up by said Magistrate
is in the words and figures following to
wit

Know all men by these presents that we the
undersigned President and Trustees of the
Town of Warren in the County of Daviess
& State of Illinois, as principal and Treasurer
A. Tisdell Jr. as surety of the County and
State aforesaid are held and firmly bound
unto John D. Platt in the penal sum of
Twenty five dollars lawful money of
the United States for the payment of which
well and truly to be made we bind
ourselves our successors in office

our heirs and Administrators jointly
and severally and firmly by these
presents. Witness our hands and seals.
This 26th day of June A.D. 1857

The condition of the above obligation
is such that whereas the said John G. Platt
did on the 25th day of June A.D. 1857
before James Meadough a Justice of
the Peace for the County of Jo Daviess
and State of Illinois recover a judgment
against the above bounden President and
trustees of the Town of Warren for the
sum of Dollars and cents
from which judgment the said President
and Trustees of the Town of Warren aforesaid
have taken and appeal to the Circuit Court
of the County of Jo Daviess aforesaid
and State of Illinois, Now if the said
President and Trustees of the Town of
Warren shall prosecute their appeal
with effect and shall pay whatever
judgment may be rendered by the
Court upon dismissal or trial of said
appeal then the above obligation to be void other-
wise to remain in full force and effect

Thomas C. Champion Seal
President of Board of Trustees of Town of Warren

Geo A Tisdell Seal } Trustees of
Allan J Barnes Seal } Town of Warren
J McCreath Seal
Geo A Tisdell Jr Seal

2
Approved by me at my office this 26th day
of June A.D. 1857 at two o'clock P.M. of said day
James Middough
Justice of the Peace

Endorsed

Filed this 26th day of June A.D. 1857 at my office
James Middough Justice of the Peace

Filed August 29th 1857

W R Rowley Clerk

Upon the filing of which there was issued
out of the office of the Clerk of the Circuit
Court a summons to the said defendant
which is in the words and figures following
to wit:

State of Illinois
of said County of Jo Daviess County of The People of the State of
Illinois to the Sheriff of said
County Greeting.

We command you to
summon John D. Platt, to appear before
the Circuit Court of Jo Daviess County
at the next term, to be holden at Galena
on the 3^d Monday of October next to answer
the President & Trustees of the Town of
Warren in an appeal.

And have you then there this
writ. Witness William R. Rowley
Clerk of the Circuit Court of

Jo Daviess County, Illinois, and the
Seal thereof at Galena this 29th day of
August A D 1857
Attest - W. R. Rowley Clerk

Endorsed

Executed this writ this 21st September
1857 by reading the same to the within named
John D Platt

S. R. Miner, Sheriff

And afterwards to wit on the 20th day of
October A D 1857 at the October Term A D 1857
of said Jo Daviess County Circuit Court in
the record of the proceedings thereof in said
cause appears the following entry to wit:

President & Trustees of
Town of Warren

Appeal

142

vs
John D Platt

The defendant
by his attorney comes
and files Motion to dismiss
appeal

The Motion referred to in the above
recited order is in the words and figures
following to wit:

The President and Trustees of the Town of Warren
vs
John D Platt

In the Circuit Court
October Term
A D 1857

And the said
defendant comes and moves the Court

To dismiss this suit and for Cause
shows the following reasons
1st The Justice before whom the Cause
was commenced had no jurisdiction
of the action

2nd The Justice of the Peace before whom
the action was tried had no jurisdiction
of the action

3^d Because the Justice was not a
Police Justice before whom the Cause
was commenced or tried

4th Because the Court below had
no jurisdiction whatever of the subject
matter of the suit

5th And for other good and suffi-
cient reasons

McGinnis & Marvin
for Deft

Endorsed
Filed October 20th 1857
W R Bowley Clerk

And on the same day to wit on the
20th day of October A.D. 1857 the said
defendant by his Attorney filed
another motion to dismiss appeal
which said motion is in the
words and figures following
to wit

The President & Trustees
of Town of Warren
vs
John A. Platt

In the Circuit Court
October Term
A.D. 1857

And the said defendant comes and
moves the Court

To dismiss the appeal in this case for the

To dismiss the appeal in this case for the following reasons

1st That no appeal is allowed by the plaintiffs in this case

2nd Because there is no sufficient appeal Bond filed

3^d Because the appeal was not taken according to law

4th because no appeal is allowed in the case

4th and for other good and sufficient reasons

McGinnis & Marvin

Attys for Deft

Endorsed

Filed October 20th 1857

W R Rowley Clerk

And afterwards to wit on the 2nd day of November A D 1857 as per of the said Return Term 1857 of said Circuit Court in the record of the proceedings thereof in said Cause appears the following entry to wit
The President & Trustees
of Town of Warren

Appeal

vs
John D Platt
On motion of Appellants leave is granted them to file amended Appeal Bond which is accordingly done

The ^{undisputed} Appeal Bond referred to in the

last recited order is in the words and figures following to wit

Know all men by these presents that we Thomas O. Champion, Freeman A. Tisdell, Allan J. Barnes, James W. Seaveritt and Delos A. Tisdell, the President and Trustees of the Town of Warren and Ross McClellan are held and firmly bound unto John D. Platt in the Personal sum of Twenty five Dollars lawful money of the United States, the payment of which well and truly to be made, we bind ourselves our successors in office & our heirs executors & administrators jointly severally & firmly by these presents Witness our hands and seals This 2nd day of November A.D. 1857

The Condition of the above obligation is such that Whereas the said John D. Platt did on the 25th day of June A.D. 1857 before James M. Adair a Justice of the Peace for the County of Goddard and State of Illinois recover a Judgment against the above bounden President and Trustees of the Town of Warren for the sum of Nine & 4⁷/₁₀₀ Dollars costs of Suit from which Judgment the said President and Trustees of the Town of Warren have taken an appeal to the Circuit Court of the County of Goddard aforesaid and State of Illinois. Now if the said President and Trustees of the Town of Warren shall prosecute

their appeal with effect and shall pray whatever
Judgment may be rendered by the Court
upon the dismissal or trial of said
appeal then the above obligation to be void
otherwise to remain in full force & effect

Approved Nov 2nd 1857 Thomas E. Champion Deat

W. R. Rowley & Co. President of the Town of Warren Deat

J. A. Tisdell sr. Trustee Deat

A. J. Barnes of the Town of Warren Deat

J. A. Tisdell Warren Deat

J. H. McClellan Deat

Endorsed

Filed Nov 2nd 1857

W. R. Rowley Clerk

And afterwards to wit on the 12th day of Nov
A D 1857 as yet of the said October term
A D 1857 of said Circuit Court in the
record of the proceedings thereof in said
cause appears the following entry to wit:

The President & Trustees
of Town of Warren vs. Appeal

John D. Platt. Now at this
day came on to
be heard the motion

heretofore filed by Defendant by his Attorney
to dismiss this suit for want of jurisdic-
tion. Which after argument by counsel
is overruled by the Court to which

ruling the defendant by his Attorney
excepting

And afterwards to wit on the 24th day of
November AD 1857 as yet of the said Oct.
Term AD 1857 of said So. Davis County
Circuit Court in the record of the
proceedings thereof in said cause appear
is the following entry to wit;

The President and Trustees
of the Town of Warren Appeal

John D. Platt vs. Now at this
day came the
parties by their Attorneys &
upon issue joined they waive the interven-
tion of a Jury and for trial put themselves
upon the Court. And after hearing a
part of the evidence the further hearing
of this cause is postponed until to-
morrow morning.

And afterward to wit on the 25th day
of November AD 1857 as yet of the said
October Term 1857 of said Circuit Court
in the record of the proceedings thereof in
said cause appears the following entry
to wit

The President & Trustees
of the Town of Warren

Appeal

vs
John D Platt

Now at this
day came again the
parties by their Attorneys
and the Court after hearing the remainder
of the evidence and arguments of Counsel
takes the Case under advisement

And afterwards to wit on the
27th day of November A D 1857 as yet of the
said October Term A D 1857 of said for
David Corning Circuit Court in the record
of the proceedings of said Court in said Cause
appears the following entry to wit

The President & Trustees
of the Town of Warren

Appeal

vs
John D Platt

The Court being
fully advised and
having fully considered
of this Cause finds the issue for the Plaintiff
and the Debt to be five dollars. And the
Defendant by his Attorney moves the Court
for a new trial herein and files his reasons
therefor. Which motion is overruled by
the Court to which the Defendant by his
attorneys excepts. It is thereupon con-
sidered by the Court that the Plaintiff have
and recover of the Defendant the sum

of Five Dollars. Their debt so as aforesaid, found by the Court together with the costs of the Court below and that Execution issue therefor. And on Motion of the defendant by his Attorney it is ordered by the Court that the Costs of but four witnesses be taxed against him And the defendant by his Attorney comes and prays an appeal to the Supreme Court which is granted. Conditioned that he enter into a bond properly Conditioned in the sum of Two hundred Dollars with Preserved Ireland, Stephen H Clark, or J E Sandoz as his surety within fifteen days from this date —

The Motion filed by the Defendant for a new trial is in the words and figures following to wit;

President and Trustees
of the Town of Warren

vs
John D Platt

In the Circuit of W. D. Davis
County Illinois Oct
Term AD 1857.

And the said defendant comes and moves the Court for a new trial hereto and for cause shows.

- 1st That the finding of the Court is contrary to the law, and the evidence in the case
- 2nd Because the Court did not disregard the testimony in relation to the election

The Bill of Exceptions referred to in the last recited entry is in the words and figures following to wit;

The President & Trustees
of the Town of Warren
vs
John D Platt

Be it remembered
that before the trial of this Cause the said
defendant moved to dismiss this suit
want of Jurisdiction in the Court or
the Court below which motion was ^{overruled by the Court saying}
the words and figures following to wit

President & Trustees of
The Town of Warren
vs
John D Platt
October Term AD 1857
And the said
defendant comes and
moves the Court to dismiss
this suit and for cause shows the following
reasons.

1st The justice before whom the Cause was
commenced had no jurisdiction of the
action

2nd The jurisdiction justice of the Peace
before whom the action was tried had
no jurisdiction of the action

3rd Because the justice was not a Justice

Justice before whom the Cause was Commenced, ^{and} Tried

1st Because the Court below had no jurisdiction whatever of the subject ^{Matter} of the suit

2nd And for other Good and sufficient reasons

Mc Ginnis & Marvin
for def^t

Endorsed

Filed Oct 20th 1857

W R Rowley clk

The President and Trustees
of the Town of Warren

In the Circuit Court
October Term AD 1857

vs
John D Platt

and the said defendant comes and moves the Court to dismiss the appeal in this case for the following reasons
1st That no appeal is allowed by the plaintiffs in this case

2nd Because there is no sufficient Appeal Bond filed

3rd Because the Appeal was not Taken according to Law

3rd Because no appeal is allowed in the case

4th And for other good and sufficient reasons

Mc Ginnis & Marvin ^{attys} for def^t
Endorsed, Filed Oct 20th 1857

W R Rowley clk

(Motion No 2)

to which ruling & decision of the Court -
the defendant by his Attorney then & there
excepted

The Plaintiffs then to support
their case produced Alexander Burnett
as a witness who being sworn testified
that he lived in the Town of Warren
County of Jo Daviess & State of Illinois
that he was a member of the first board
of Trustees of said Town of Warren
that he was Trustee up to 24th or 25th
of May 1857 that the Book presented to
him (Plaintiffs Counsel here showed witness records
of the proceedings of said board of Trustees)
~~was the Book containing the Records~~
of the proceedings & the ordinances passed
by said board. That the ordinances therein
were passed by said Board at the times stated
in said Records. That C W Blaisdell was
the first Clerk of said Board & is now
in Minnesota & has left this State & that
the present Clerk is one of the Plaintiffs
in this suit & is a member of the Board
of Trustees.

Witness further testified that said
ordinances passed March 16th 1857
were published in the Warren Republican
a public Newspaper then printed in said
Town of Warren for two successive
weeks the first publication on the 30th

of March 1857 & the next on the 27th of
the said month

Also that said ordinances
passed March 26th 1857 were published
in said Newspaper first on the 3^d
day of April 1857 & again on the 10th
day of the same month. And that
the Editor of the said Newspaper had
left this State and is now residing in
Minnesota

Plaintiff then offered & read in
Evidence all of said ordinances passed
on said 16th of March 1857 & 26th of March
1857 as follows to wit

"Corporation Proceedings"

Monday Evening March 16

Board met pursuant to adjournment
Present. The President: J. C. Champion J. D. Platt
A. Shinn.

J. C. Champion Chairman of Committee
on Ordinances reported the following ordinance
which upon motion was adopted

Section 1. Be it ordained by the President and
Board of Trustees of the Town of Warren, that it
shall be unlawful for any person or persons
within the limits of said town to engage in or
pursue any business, avocation or calling or
do any act or make any exhibition hereinafter
named or described without having first

paid such sum for License so to do
as is hereinafter provided and required.
Any person violating any of the provisions of
this ordinance shall be fined in a sum
not less than five dollars nor more than
Twenty-five Dollars. to be recovered in an
action of debt before any Court of competent
jurisdiction.

Sec 2. All licenses to be granted by the
President and board of Trustees of the Town
of Warren. shall be on application of the Person
or person desiring the same in writing
declaring for what purpose the same is desired
designating the Street lane or alley and descri-
bing the lot house, room or place wherein
the said Applicant or Applicants shall ex-
ercise their calling employment or voca-
tion, and the time for which such license
is required, and the said Applicant or
Applicants shall also produce the Treasurer's
receipt for the amount to be charged for
said license together with the Clerk's fee
of One Dollar for issuing each and every
such license.

Sec 3 No license granted under this or
any other ordinance made by the President
and board of Trustees of the Town of
Warren, shall ^{be} assignable or transferable with-
out permission of the said President and

board of Trustees, to be granted by Two Thirds of Said Board, the same to be registered by the Clerk of the Board in the name of the purchaser for which the Clerk shall receive a fee of fifty cents, to be paid by the party desiring such transfer.

Sec 4 Whenever the Board of Trustees of the Town shall not be in session the President or clerk of said Board, on the proper application and upon the production of the Treasurers receipt for the sum of three Dollars, and the payment to the Clerk of his fee may grant license to any person in all cases where such license is authorized and required and such license shall be good and valid until the next meeting of the Board, at which next meeting the President or Clerk, as the case may be shall present such application to the Board, who shall act upon the same, and the amount so paid shall be allowed to such applicant as a part of the sum determined upon for a license in the case.

Sec 5 Every Manager of a Theatre, or any person or persons concerned or engaged in any Theatre or Theatrical exhibition musical concert or party for gain except

ladies fairs, library lectures or lectures before
any literary association and Concerts of
Music by Citizens of the Town) and all
persons engaged in Equestrian exercises
or feats of Horsemanship, rope & wire dancing
puppet shows, legerdemain, shows of war
figures Menageries, Circuses, and all
manner of public Exhibitions for gain
shall ^{first} pay for license therefor a sum
not less than Three nor more than one
hundred Dollars, Provided, that no license
shall be granted by the President of said
board of Trustees to any manager of
any Menagerie or Circus for a less sum
than Twenty five Dollars, and then only
for such exhibition or performance for one
day.

Sec 6 Every Auctioneer or other person who
shall sell at Public Sale or Auction
within the limits of the Town of Warren
any Goods Chattels, Wares or Merchandise
shall pay for license so to do a sum not
more than Twenty five Dollars nor less
than Three Dollars, in the discretion of
the Board of Trustees to be regulated by
the time for which such license shall be
given; And shall further pay into the Treasury
of said Town the sum of One per cent upon
the proceeds of such sales, Provided, no

such license shall be granted until the person or persons desiring the same shall file with the Clerk of the Board of Trustees a Bond to the President and Trustees of said Town in the ^{Penal} Sum of One hundred Dollars Conditioned to appear and render to the Clerk of said Board of Trustees, a just and true account of all such sales, and pay to the Treasurer of said Town the sum of One per Cent thereon at least as often as once in every month and oftener if desired by the Clerk or President Treasurer.

F. A. Tridel Jr. President

C. H. Blaisdell Clerk

On Motion of J. C. Champion it was resolved that the above ordinance shall take effect on the 1st day of April 1857. On Motion a Committee of Three were appointed to take into consideration the building of side walks and to report at the next meeting. J. C. Champion, A. Shinn and A. Burnett were appointed said Committee. Voted that ordinances be published in the Warren Republican.

Adjourned to Saturday March 21st 1857

C. H. Blaisdell Clerk

The Ordinances passed on the 26th of March
1857 are in the words and figures following
to wit

An Ordinance

To Amend an ordinance in relation to
ordinances passed March 16th 1857

Be it ordained by the President
and Trustees of the Town of Warren that
the following "be" sections be added to
the ordinances in relation to Licenses
passed March 16th 1857 as additional
sections and that all the provisions
of sections 1. 2. * 3 & 4 shall apply there-
to in the same manner as to the
original ordinances.

Merchants

Section 7. No Merchant, Pedlar, or
other person whatever, shall sell, retail,
at private sale or otherwise, within the
Town of Warren, any goods, chattels wares
or Merchandize without having first pro-
cured a license therefor as provided
in this Ordinance. Such license may
be issued upon the following terms. To
wit: To Merchants upon such terms
as the President and Trustees shall
determine upon their case provided
the liberty to sell being confined to a
particular store or lot. To Pedlars

7
for a sum not less than at the rate of
thirty dollars per annum provided no
license shall be granted to peddlars or
hawkers for a less term than three months.
This Ordinance shall be deemed to include
and apply to in addition to those usually
deemed Merchants, all and every dealer
in Boots, Shoes, leather, ready made clothing
cloths, hardware, stoves, Iron, glass, Nails
Tin Ware, lumber (if the same be sold in
quantities less than 30,000 feet) Shingles,
Lath, drugs, medicines, patent medicines,
Books, Stationary, clocks, Watches or jewelry
or any of them except the same be manu-
factured by the person or persons dealing
therein.

Taverns

Section 8. No person shall keep a Tavern in the
Town of Warren without having first procured
a license therefor. Any person desiring to
keep a Tavern as above specified shall first
satisfy the President and Trustees that he or she
is bona fide provided with rooms and furniture
and other necessary means to furnish meat
and Lodging for at least ten persons, besides
his or her ordinary family. Together with
stabling and provender for at least six
horses, and shall execute a Bond in the
penalty of five hundred dollars with

good and sufficient sureties to be approved by the President & Trustees Conditioned That he or she will keep an orderly house, and will not permit any unlawful or riotous conduct therein. No Tavern license shall be granted for a term longer than one year, or less than six months nor for a term sum less than at the rate of twenty five dollars per annum.

Groceries

Section. 2. No person or persons shall keep a grocery within the Town of Warren without first having procured a license therefor. A Grocery within the meaning & intent of this ordinance shall be deemed and taken to be any house or place wherein any spirituous, wine or fermented liquors are sold or retailed in less quantities than one quart & druggist excepted by whom such liquors may be disposed of for purposes purely medicinal, mechanical, chemical or sacramental. Any person applying for a grocery license shall first execute a bond with good and sufficient sureties (to be approved by the president and Trustees in the penal sum of five hundred dollars conditioned That he or she will keep an orderly house and will not permit any unlawful gaming or riotous conduct therein. Grocery license may be granted for a term not less than six months, and at the rate of not less than one hundred and fifty dollars a year. Provided. That no grocery shall be kept open or any company entertained therein on Sundays, and that the

President and Trustees of said Town, upon formal complaint and satisfactory proof thereof to them that the privileges herein granted to grocers or Tavern keepers have been abused, or that any person to whom such license was granted had violated any of the foregoing provisions shall immediately thereupon revoke, or suppress such license.

Ordinaries

Section 10. No person or persons shall keep any ordinary within the limits of the Town of Warren without having first procured a license so to do, which license may be granted for a sum not less than at the rate of fifteen dollars per annum. All houses, cellars, booths, sheds, and permanent and temporary stands, within this Town, where or in which the owners or occupants thereof shall sell or retail any articles of meat and drink for present use, or shall sell or expose to sale any butter, lard, honey, eggs, fruit, melons or vegetables or any article of cooked or prepared food by the meal or luncheon or in smaller or larger quantities than to be eaten or consumed, shall be deemed Ordinaries within the meaning of this ordinance. No licensed Tavern or regular boarding house where food is prepared for and consumed by regular and constant boarders only shall be considered an ordinary by this ordinance.

Livery Stables

Section 12. No person or persons shall keep any Livery Stable, Shed, yard or place for the entertainment or hire of horses, mules, carriages, buggies, or sleighs, within the limits of the Town of Warren, for gain without being first licensed for that purpose. Any person desiring such license as aforesaid shall pay for the same a sum not less than at the rate of Ten Dollars per annum. Provided that no person shall, by color of such license keep more than one stable yard or shed as hereinbefore described within the limits of said Town at the same time.

Draying

Sec "12" No person or persons shall exercise the calling of a draysman, Carter, or wagoner for hire, within this Town without having first "produced" a license so to do such license may be granted for a sum not exceeding five dollars, and for a term not exceeding one year.

Meat Markets

Sec 13. No person or persons shall be permitted to sell at retail within the Town of Warren any Beef Pork or other meats without having first obtained a license so to do such license to be granted for a sum not less than at the rate of Ten Dollars per annum.

And for a Term not less Than Three Dollars
Months. And provided That Merchants
or grocers shall not be hereby prohibited
from selling any Smoked Hams. Shoulders
or bacon or other Smoked or Salted Meats.

F A Tisdell Sr. President

C W Blaisdell Clerk

To the introduction of which
said ~~testimony~~ Ordinances defendants Coun-
- sel then & there excepted. On the ground
that the Editor of said paper was not
called to prove the same. Which
objection was overruled by the Court
to which ruling of the Court defendants
Counsel then excepted. Witness further
testified that the following Notice to wit

Notice

The Freeholders of the Town of Warren are
earnestly requested to meet at Platts
Hall on Wednesday evening Feb. 11th at
early candle light for the purpose of
taking into consideration the propriety
of incorporating said Town.

John A Platt

Thos H Farmer

Mrs. Burnett

Thos E Champion

III

was published in said Newspaper at the
Time said paper bears date 30th January
1857 & was published for two successive
weeks - Witness also testified that the
following notice for the election of
Trustees To wit

Public Notice

Is hereby given to the qualified voters of
The Town of Warren to assemble at Platt's
Hall in said Town, on Saturday the 21st day
of February A.D. 1857 between the hours of
8 o'clock A.M. and 5 o'clock P.M. of said
day, to elect five resident freeholders of
said Town Trustees of the same

Thos. E. Champion, clk

was published in said newspaper February 13
1857 & two weeks in succession

Plaintiffs then read both of said notices in
evidence to the reading of which Defts Counsel
then and there objected on the ground that the
Editor was not called to prove the same
which objection was overruled by the Court
to which ruling of the Court Defts Counsel
then & there excepted

Witness further testified
that the defendant was a merchant & doing
business as such in Warren when this
suit was commenced & that in Feb-
ruary last there were he should think

Three hundred people in Warren.
On his Cross examination Witness further
testified that at the election for Trustees
of said Town held February 21st 1857 the
voting was, viva voce. And that an
assessment list of persons doing business
in Warren was made out including defendants
and reported to the Board of Trustees and
adopted by them before this suit was
commenced.

J. J. Thornton was then
introduced as a witness by Plffs who tes-
tified that he resided in Warren & did
so at the time date of the newspapers
testified to by Mr Barnett. That he knew
the Warren Republican & that the papers
containing the ^{notices} ~~papers~~ ordinances testi-
fied to by Mr Barnett were published
on the days they bear date. That he
took said newspaper was often in
the office when it was struck off. & took
a good deal of interest in the matter in the
matter of publication of ordinances. That
he never worked in office of said papers
& this was his means of knowledge.

J. A. Searcy was then called
as a witness by plaintiffs & testified that he
was clerk of board of Trustees of town of
Warren & that no license had been given

to deft. Cole was then called as a witness for plaintiff who testified that he was Treasurer of said Town & that Defendant had never paid License to his knowledge -

It was also proven on said trial that D E Champion A Burnett A Shinn F A Tisdell Sr & D D Platt were elected Board of Trustees on the first Election for Trustees of said Town Feb 21. 1857 and that at the first meeting of said board the oath of office was administered to the Trustees and F A Tisdell Sr one of the ~~Trustees~~ ~~Trustees~~ members chosen president of said board & the record read as follows. To wit

At a meeting of the legal voters of the Town of Warren held pursuant to legal notice at Platts Hall on the 11th day of February A.D. 1857 the following vote was taken

For Incorporation	29
-------------------	----

Against Incorporation	9
-----------------------	---

At an election held pursuant to notice for the purpose of choosing five Trustees for the Town of Warren D D Platt having been first duly qualified acting as president the following proceedings were had D E Champion, Clerk being absent C M Biddle

was chosen Clerk pro Tem and duly qualified. The following vote was taken

T.C. Champion received	"	74 votes
A. Burnett	"	55 "
F. A Tisdell Sr	"	61 "
Amos Shinn	"	36 "
J. D. Platt	"	48 "
P. Ireland	"	33 "
A. Hyde	"	29 "
G. A. Tisdell	"	20 "
Geo. Jameson	"	16 "
Chas. Cole	"	6 "
T. H. Farmer	"	2 "
John Kenny	"	1 "
J. D. Thornton	"	2 "
A. S. H. Dobler	"	1 "

T.C. Champion, A. Burnett, A. Shinn, F. A. Tisdell Sr. and J. D. Platt having received a majority of the votes cast were declared elected a board of Trustees for the Town of Warren

C. W. Blaisdell

Clerk Pro Tem

Proceedings of the Board of Trustees.

Thursday Evening Feb 26th /37

Present J. D. Platt, T.C. Champion, A. Shinn, A. Burnett, F. A. Tisdell Sr. The oath of office being duly administered to each of the members of the Board by T. H. Farmer

justice. The following proceedings were had.

F A Tisdell Sr. was elected President of the board & C W Blaisdell Chosen Clerk and duly Qualified.

Plaintiffs Counsel then produced Richard Seal (who testified that he is now & was on the 2nd day of March 1857 Clerk of the County Court of this County that the following paper, to wit,
To the Honorable

The President and Clerk of the meeting held in Board of Directors of the Town of Warren on Wednesday evening February 11th A.D. 1857 for the purpose of Considering the propriety of Incorporating said Town and determining whether the same should be incorporated do hereby certify that at same meeting the following vote was taken to wit
For Incorporation Thirty four (34) votes against Incorporation Nine (9) votes. Witness our hands this 26th day of February 1857

John O Platt President
Thos C Champion Clerk

Endorsed

Filed March 2nd /57
R Seal Clerk

was brought to his office by Defendant
he thinks & that Witness filed the same
and entered the substance of the same
upon the Records in his office. Plaintiffs
then read said Certificate in evidence
It was admitted by the Counsel on both
sides that the signature of John D Platt
& Thomas O Champion to said Certificate were
genuine. To the reading of which said
Certificate in evidence the Deft by his Counsel
then & there objected because said paper
was not recorded in full. Which objection
was overruled by the Court to which ruling
of the Court Defts Counsel then & there excepted

Defendants then introduced as a
Witness J Hicks who testified that he went
to the place of holding first Election of
Trustees of Warren Feb 2nd 1857 with Porter
Cobb. half an hour before Polls were to
close & the polls were closed when he got
there, he could not tell whether it was
 $\frac{1}{2}$ past four o'clock or $\frac{1}{4}$ past 5 o'clock
that he reached the polls.

C Potter, was then called as a witness by
Defendant & testified that he was at the
election of Trustees. That the polls closed
within five minutes of four o'clock P.M. that
the time of closing Polls by the notice for
election in the Warren Republican was

five o'clock P.M. and that the Election for
Trustees was viva voce & not by Ballot.

Defendant then called Anson Rising
who testified that at time of said Election of
Trustees Defendant lived on Long Street
but did not know whether it was in
Recorded plot or not. but thinks it was on
the original plot.

That he was present at
Election of Trustees. left his house for the polls
at 4 o'clock P.M. & remained at the Polls
he think an hour before they closed That the
Polls closed at five o'clock When time
arrived for closing the polls. Watches were
compared by the judges of Election That of
defendants with another and the time ~~was~~ ^{was}
and five minutes allowed for difference
of watches after five o'clock. and the
Clerk Mr Blaisdell announced that the
Polls were closed.

Mr Marvin was called
as a witness for defendant & testified that
he lived in Warren at the time of Election
of Trustees & was present when the assessment
list was made out by the Committee of the
Board of Trustees. It was done in the
reading room of Tisdells Tavern.

J Pierce was then called for
Def & testified he was at the Election for Trustees

10
a short time but don't know when Polls closed
Said Cause was tried by The Court & a jury
waived by agreement of the parties.

The Court found for the Plaintiffs the sum of
Five Dollars. as follows to wit

The President and Trustees

of the Town of Warren

142
vs
John G Platt

Appeal

The Court being

fully advised and
having fully considered of
this cause finds the issue for the plaintiff
and the debt to be five Dollars. and the defen-
dant by his attorneys moves The Court
for a new trial herein & files his reasons
therefor, which motion is overruled by the
Court to which the defendant by his attorney
excepts. It is thereupon considered by the
Court that the plaintiffs have, and recover
of the defendant the sum of five Dollars
their debt so as aforesaid found by the
Court together with their costs by them
about their suit in this behalf expended
together with the costs of the Court below
and that execution issue therefor. And
on motion of the defendant by his attorney
it is ordered by the Court that the costs
of but four witnesses be taxed against
him. And the defendant by his attorney
comes and prays an appeal to the

Supreme Court which is granted Conditioned
that he enter into a bond properly conditioned
in the sum of Two hundred dollars with
either Preserved Ireland, Stephen H Clark
or T. C. Sandoe, as his surety within fifteen
days from this date

The Defendant by his
Counsel moved the Court for a new trial.
which motion is in the words and figures following
to wit

The President & Trustees of
The Town of Warren
vs
John D. Platt
In the Circuit Court
of St. Davids County Illinois
At Term 1887

And the said defendant comes &
moves the Court for a new trial herein and
for Cause shows 1st That the finding of the Court
is contrary to the Law & the evidence in the case
2nd Because the Court did not disregard
testimony in relation to the election of the
President and Trustees when the same was
by vote viva voce and not by ballot
3rd Because the Court ~~received~~ received in-
proper evidence testimony of the incorporation
of the Town
4th Because the whole testimony on the part of
the plaintiffs was improperly received
5th Because the Court had no jurisdiction
of the Cause

6th And for other good and sufficient reasons
McGinnis & Marvin
for Defts

Eudoraed

Filed Nov 27th 1857

W. W. Rowley Clerk

Which was overruled by the Court - to all of
which rulings and decisions of the Court the
Defendant then and there excepted, and prayed
this his Bill of exceptions might be signed
and sealed which is accordingly done in open Court

(signed) Benj R. Sheldon Esq

The Appeal Bond filed
-dant in this Cause is in the
figures following to wit:

Know all men by these
presents that we John D. Platt and Stephen H.
Clark of the County of Jo Daviess and State of
Illinois, are held and firmly bound unto the
President and Trustees of the Town of Hannibal
also of the same County and State in the
penal sum of Two hundred dollars. (the sum
fixed by the Court), lawful money of the
United States, for the payment of which
well and truly to be made we bind our-
selves our heirs Executors and Ad-
ministrators jointly and severally
and firmly by these presents. Witness our
hands and seals this 3rd day of December

Ad 1857

The Condition of the above obligation is such that Whereas the said president and Trustees of said Town of Warren did on the twenty seventh day of November Ad 1857 in the Circuit Court in and for the County and State aforesaid recover a judgment against the above bounden John D Platt for the sum of Five Dollars Debt & Costs of suit from which said Judgment of the said Circuit Court the said John D Platt has prayed for and obtained an appeal to the Supreme Court of said State now if the said John D Platt shall duly prosecute his said Appeal with effect and shall moreover pay the amount of said Costs interests and damages to be rendered against him in said Judgment shall be affirmed in said Supreme Court then the above obligation to be void otherwise to remain in full force and effect - virtue

John D Platt Deed
Stephen A Clark Deed

Endorsed

Filed Dec 7th 1857

W R Rowley Clerk

State of Illinois
Jo Daviess County, *ss* J W R Cowley Clerk of the
Circuit Court in and for said
County in the State of said, hereby Certify
the foregoing to be a true and correct
Transcript of the Proceedings of said Jo Daviess
County Circuit Court together with the
Bill of Exceptions as certified by the Court
in the above entitled Cause of
The President & Trustees of the Town of
Warren vs John A Platt. as the same
appear of Record in my Office.

In testimony Whereof
hereunto set my
affixed the Seal of said Court
at my Office in Galena this 11
day of January A.D. 1858
Attest J W R Cowley Clerk



It is agreed that this record may be
considered by the Court as though the same
were duly incorporated in the bill of exceptions
in the case of Hicks vs. Rising

April 30 1860

E. S. Ireland for
Appellant

B. C. Crook
for appellee

Hicks
vs
Rising

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Filed April 30. 1860
E. S. Ireland
 clerk



State of Illinois }
Sec County }

as Pleas in the matter of
Anson Rising, against
Thomas Hicks in an action
on the case, commenced
in the Circuit Court of the
County of Jo Daviess, and taken
from thence on a change of
venue to the Circuit Court of
the County of Stephenson
and brought from thence on
a change of venue to the
Circuit Court of the County of
Lee, all in the State of Illinois.

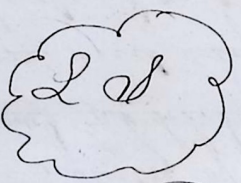
Be it remembered that on the day of the
date thereof, to wit on the 20th day of February
in the year of Our Lord 1858, at the instance
of the said plaintiff in said cause a Writ
of Summons issued out of the Clerk's Office of
the Jo Daviess County Circuit Court, in the
words and figures following: that is to say,

1
" State of Illinois, } S.A.
Co Daviess County.

The People of the State of Illinois To the Sheriff
of said County - Greeting;

We command you to summon Thomas Eicks...
to appear before the Circuit Court of Co Daviess
County, at the next term, to be holden at Galena,
on the 2^d Monday of March next, to answer
Anson Kising, in a plea of trespass on the
case, damages, Ten Thousand Dollars.

And have you there this writ.
Witness, William R Rowley, Clerk of the Circuit
Court of Co Daviess County, Illinois, and the seat thereof,
at Galena, this 26th day of February. A.D. 1858
Attest: W R Rowley, Clerk. "

 ^{endorsed}
" Executed this writ by reading the
same to the within named Thomas Eicks
this 26th day of February. A.D. 1858
S. K. Miner, Sheriff

Filed Aug 24. 1858

At W. Gentman, Clk. "

And on the 25th day of February A.D. 1858.
the Plaintiff in said cause filed his Declaration
in the words and figures following: to wit:

" State of Illinois } Circuit Court of Co Daviess
County of Co Daviess County To The March Term 1858.

Anson Kising The plaintiff in this
suit, by M. D. Sweet & Thos E Champion his

attorneys complains of Thomas Hicks the defendant
in this suit. who has been summoned to answer
the said plaintiff in a plea of Guilty on the Case.

For that whereas the said plaintiff now is
a good, true, honest, just and faithful citizen of this
state, and as such hath always behaved and conducted
himself, and until the committing of the several
grievances by the said defendant thereafter mentioned
was always reputed esteemed and accepted by and
amongst all his neighbors, and other good and worthy
citizens of this state, to whom he was in any wise
known to be a person of good name, fame and credit
to wit at &c the County of Jo Davies and State of Illinois,

And whereas also the said plaintiff hath not ever
been guilty or until the time of the committing of
the said several grievances by the said, defendant
as herein after mentioned, been suspected to have
been, guilty of perjury, or false swearing or any other
crime as herein after stated to have been charged
upon and imputed to the said plaintiff by the said
defendant or of any other such crime. By means of
which said perjuries, the said plaintiff before the
committing of the several grievances by the said
defendant, as herein after mentioned, had lawfully
obtained the good opinions and credit of all his
neighbors and other good and worthy citizens of this
state, to whom he was in any wise known to wit,
at &c the County of Jo Davies and State of Illinois
aforesaid. And, whereas also, before the speaking
of the several false, scandalous, malicious, and
defamatory words by the said defendant of and concern-
ing the said plaintiff in the first, second, third and
fourth counts hereinafter mentioned, a certain
action was depending in the Circuit Court of

The County of Jo Daviess in the State of Illinois, where in the President and Trustees of the Town of Hannu were plaintiffs and one John D. Platt, was, defendant and in the which said suit, before the speaking and publishing of the same words to wit at &c a trial was had in the Circuit Court of the County and State aforesaid, before the Honorable Benjamin H. Sheldon then sole presiding Judge of said Court, on the trial of which said suit as aforesaid, he the said plaintiff was duly sworn and did take his corporal oath in due form of Law, before the said Judge he the said Judge, then and there having sufficient and competent power and authority to hold said Court and try said Cause and to administer an oath to said plaintiff in that behalf, and the said plaintiff having been so sworn and having so taken his corporal oath was then and there examined and did give his evidence as a witness on the trial of said Cause to wit at &c The County and State aforesaid: and the said plaintiff further saith, that the said defendant well knowing the premises, but greatly enjoying the happy state and condition of the said plaintiff, and contriving and intending to injure the said plaintiff in his aforesaid good name, fame and character and bring him into public scandal, infamy and disgrace with and amongst all his neighbors and other good and worthy citizens of this State to whom he was in anywise known and to cause it to be suspected and believed by those neighbors and citizens that he, the said plaintiff had been and was guilty of perjury, and to subject him to the pains and penalties by the laws of this

State made and provided against, and inflicted upon persons guilty thereof and also to oppress, harass, oppress, impoverish and wholly ruin him the said plaintiff heretofore to wit on the twenty seventh day of November A.D. 1857 at &c, the County of Goddard and State of Illinois aforesaid in a certain discourse which the said defendant then and there had in the presence and hearing of divers good and worthy citizens of this State the said defendant in the presence and hearing of the said last mentioned citizens falsely and maliciously spoke and published of and concerning the said plaintiff, and of and concerning the trial of said suit as aforesaid, and of and concerning the said evidence so given by the said plaintiff on the said trial as aforesaid, the false, scandalous, malicious and defamatory words following, that is to say, Rising (meaning the said plaintiff), swore false, Rising (meaning the said plaintiff), has sworn false, Rising (meaning the said plaintiff), has sworn falsely, Rising (meaning the said plaintiff), did swear false, Rising (meaning the said plaintiff), did swear falsely, He (meaning the said plaintiff), swore false, He (meaning the said plaintiff), swore falsely, He (meaning the said plaintiff), did swear false, He (meaning the said plaintiff), did swear falsely, He (meaning the said plaintiff), has sworn false, He (meaning the said plaintiff), has sworn falsely, Then and there be there & there meaning that the said plaintiff in giving his evidence as such witness on said trial as aforesaid had committed wilful and corrupt perjury, and afterwards to wit on the day and year aforesaid, at &c the County and State aforesaid in a certain other discourse which the said defendant then and there had in the presence and hearing of

divers other good and worthy citizens of this State
the said defendant further contriving and
intending as aforesaid then and there, in the
presence and hearing of the said last mentioned
citizens, falsely and maliciously spoke and pub-
lished of and concerning the said plaintiff the
false, scandalous, malicious and defamatory
words following, that is to say, He (meaning the
said plaintiff), has perjured himself, He (meaning
the said plaintiff) had perjured himself, He
(meaning the said plaintiff), did perjure himself,
He (meaning the said plaintiff), has committed
perjury, He (meaning the said plaintiff) had
committed perjury. He (meaning the said
plaintiff) had committed perjury, He (meaning the
said plaintiff) was guilty of perjury, He (meaning the
said plaintiff) had been guilty of perjury, Rising
(meaning the said plaintiff) has perjured himself,
Rising (meaning the said plaintiff) had perjured
himself, Rising (meaning the said plaintiff)
did perjure himself, Rising (meaning the said
plaintiff) has committed perjury, Rising (meaning
the said plaintiff) did commit perjury, Rising
(meaning the said plaintiff) was guilty of perjury.
Rising (meaning the said plaintiff) had been
guilty of perjury (then and thereby then and there
meaning that the said plaintiff had committed
willful and corrupt perjury)

And afterwards to wit on the day and
year aforesaid, at the County and State aforesaid
in a certain other discourse which the said
defendant then and there had with the said plaintiff
in the presence and hearing of divers good and
worthy citizens of this State the said defendant

6
further continuing and intending as aforesaid then
and there in the presence and hearing of the said
last mentioned citizens, falsely and maliciously
spoke and published of and concerning the said plaintiff
the false, scandalous, malicious and defamatory words
following, that is to say, you (meaning the said
plaintiff), have perjured yourself, you (meaning the
said plaintiff), perjured yourself, you (meaning the said
plaintiff), did perjure yourself, you (meaning the said
plaintiff) committed perjury, you (meaning the said
plaintiff) did commit perjury, you (meaning the said
plaintiff) are guilty of perjury, you (meaning the said
plaintiff), have been guilty of perjury (then and thereby
then and there meaning that the said plaintiff had
committed willful and corrupt perjury),
And

And afterwards to wit on the day and
year aforesaid at the County State aforesaid in a
certain other discourse which the said defendant
then and there had in the presence and hearing
of divers other good and worthy citizens of this
State the said defendant further continuing and
intending as aforesaid then and there in the
presence and hearing of the said last mentioned
citizens, falsely and maliciously spoke and published
of and concerning the said plaintiff, and of and
concerning the said trial and of and concerning
the said evidence so given by the said plaintiff on
the said trial as aforesaid, the false, scandalous,
malicious and defamatory words following that is
to say, Rising (meaning the said plaintiff) went up to
Galena and swore false, and I (meaning the said
defendant) can prove it. Rising (meaning the said
plaintiff) has been up to Galena (meaning the place
and at the time of said trial and swore false. H

(meaning the said defendant) can prove it. Rising (meaning the said plaintiff) went in to Galena (meaning the place of said trial) and swore false and I (meaning the said defendant) can prove it. Rising (meaning the said plaintiff) has been into Galena (meaning the place of said trial) and sworn false, and I (meaning the said defendant) can prove it (Then and there by then and there meaning that the said plaintiff in giving his evidence on said trial as such witness as aforesaid had sworn false on said trial and thereby committed willful and corrupt perjury.)

5th

And afterwards to wit on the day and year aforesaid, at the County and State aforesaid in a certain other discourse which the said defendant then and there had in the presence and hearing of divers other good and worthy citizens of this State the said defendant further continuing and extending as aforesaid then and there in the presence and hearing of the said last mentioned citizens falsely and maliciously spoke and published of and concerning the said plaintiff the false, scandalous, malicious and defamatory words following that is to say. Rising (meaning the said plaintiff) swore false. Rising (meaning the said plaintiff) has sworn false. Rising (meaning the said plaintiff) had sworn false. Rising (meaning the said plaintiff) did swear false. Rising (meaning the said plaintiff) has sworn false. Rising (meaning the said plaintiff) had sworn false. Rising (meaning the said plaintiff) swore falsely. Rising (meaning the said plaintiff) did swear falsely. Rising (meaning the said plaintiff) had sworn falsely. Rising (meaning the said plaintiff) has sworn falsely.

He (meaning the said plaintiff) swore false.
 He (meaning the said plaintiff) did swear false
 He (meaning the said plaintiff) has sworn false
 He (meaning the said plaintiff) had sworn false
 He (meaning the said plaintiff) swore falsely. He
 (meaning the said plaintiff) did swear falsely. He
 (meaning the said plaintiff) has sworn falsely. He
 (meaning the said plaintiff) had sworn falsely
 (then and thereby then and there meaning that
 the said plaintiff had sworn falsely) By means of
 the committing of which said several grievances by the
 said defendant as aforesaid the said plaintiff hath
 been and is greatly injured in his good name, fame
 and credit and brought into public scandal, infamy and
 disgrace with and amongst all his neighbors and
 other good and worthy citizens of this State in so much
 that divers of those neighbors and citizens to whom the inno-
 cence and integrity of the plaintiff in the premises were
 unknown, have on account of the committing of the
 said grievances by the said defendant as aforesaid from
 thence hitherto suspected and believed, and still do
 suspect and believe the said plaintiff to have been and
 to be a person guilty of perjury, and to have sworn falsely
 so as aforesaid charged upon and imputed to him by the
 said defendant and have by reason of the committing of the
 said grievances by the said defendant, as aforesaid from
 thence hitherto wholly refused and still do refuse to have
 any transactions, acquaintance or discourse with the
 said plaintiff as they were before used and accustomed
 to have and otherwise would have had, and also by
 means of the premises the said plaintiff hath been
 and is greatly injured in his business with and
 amongst all his neighbors in so much that the said
 plaintiff hath been unable to say on or prosecute his

business as he had been accustomed to do and did
do before the committing of the said grievances by the
said defendant as aforesaid and also by means of the
premises, the said plaintiff hath been and is otherwise
greatly injured and damaged to wit at &c the County
and State aforesaid. To the damage of ^{the} said plaintiff
ten thousand dollars (\$10000⁰⁰) therefore he brings his
suit

indorsed

"Filed Feb 25th 1858

W B Rowley Clk.

M P Sweet &

Geo. E Champion

Atty. for Plff "

Filed Aug 24th 1858

L H Guntew, Clk "

And afterwards to wit on the 10th day of
November AD 1858 the Defendant in said
cause filed his pleas in the words and
figures following that is to say: -

" Anson Rising

vs

Thomas Hicks

} In Davis County Circuit Court
of the Frank Term AD 1858

And the said defendant by
Mc Clellan and Weigley & Richmond, his attorneys
comes and defends the wrong and injury where &c
and says he is not guilty of the said supposed grievances
above laid to his charge or any or either of them in
manner and form as the said plaintiff hath above
thereof complained against him, and of this the
said defendant puts himself upon the County &c

Mc Clellan & Weigley & Richmond
Atty for Defendant

And for a further plea in this behalf the said defendant says actionon because he says that before the speaking and publishing the said words of and concerning the said plaintiff, in the said several counts in the plaintiff declaration mentioned to wit at the time when he at the County of Jo Davies aforesaid at the Circuit Court of Jo Davies County Illinois and before the Hon Benjamin R. Sheldon Judge of said Court a certain issue before then joined in an action brought and prosecuted and then depending in the said Circuit Court of Jo Davies County Illinois by and at the suit of the President and Trustees of the Town of Hansen as the plaintiff against one John D Platt as the defendant for the supposed breach of a certain ^{ordinance} ~~ordinance~~ alleged by the said plaintiff in said suit to have been made by them for the government of the citizens of the Town of Hansen in the County of Jo Davies aforesaid, came on to be tried in due form of law and was then and there tried by and fore before the aforesaid judge of said Court, and upon such trial of the said issue the plaintiff appeared and was then and there duly sworn as a witness for and on behalf of the said President and Trustees of the Town of Hansen the plaintiffs in the said action, before the said Circuit Court as aforesaid, and took his corporal oath to speak the truth the whole truth and nothing but the truth touching and concerning the matters in question in the said issue. In the said judge then and there having sufficient and competent power and authority to administer the said oath to the said plaintiff in that behalf; and upon the said trial of the said issue it then and there became and was material to ascertain the truth of the matters hereafter stated to have been sworn to by the said plaintiff.

And the said defendant further says

that the said plaintiff being so sworn as aforesaid, upon his oath aforesaid, then and there to wit on the day and year aforesaid at the County of Jo Davies aforesaid, falsely, wickedly, willfully, maliciously and corruptly and by his sworn act and consent did say, depose, swear and give evidence, amongst other things, at and upon the said trial to and before the said court and the Honorable Benjamin R. Sheldon judge thereof as aforesaid, the in effect as follows that is to say that he the said plaintiff was present at the election of Trustees of the town of Warren that he left his house for the polls at said election at 4 o'clock in the afternoon that he remained at the polls as he thought for an hour before the polls were closed and that said polls were closed at five o'clock in the afternoon, that when time arrived to close the polls, watches were compared and the time was discussed and five minutes allowed for a difference between watches after five o'clock in the afternoon and the clerk Mr. Blaisdell announced that the polls were closed,

Whereas in truth and in fact the polls at the said election of Trustees of said town of Warren were not closed at or after the hour of five o'clock in the afternoon, but were then and there closed at five minutes after four o'clock in the afternoon of said day of said election

And the said plaintiff did thereby in the said Circuit Court of Jo Davies County, Illinois so holden as aforesaid, upon his said oath upon the trial of the said issue falsely, wickedly, willfully and corruptly commit willful and corrupt perjury; wherefore the said defendant, at the several times where he in the said several courts in the said plaintiff's declaration mentioned at the County of Jo Davies aforesaid, spoke and published of and concerning the said

plaintiff The said several words in the said several counts in the plaintiff's declaration, mentioned to have been spoken and published by the said defendant of and concerning the said plaintiff, as it was lawful for him to do for the cause aforesaid, and this the said defendant is ready to verify wherefore he prays judgement.

McEllan & Weigley of Richmond

Attys for defendant

And for a further plea in this behalf the said defendant says action on because he says that before the speaking and publishing the said words of and concerning the said plaintiff in the said several counts in the plaintiff's declaration mentioned, to wit at the term when he at the County of Jo Daviess aforesaid at the Circuit Court of Jo Daviess County Illinois and before the Hon. Benjamin R. Sheldon Judge of said Court a certain issue before then joined in an action brought and prosecuted and then depending in the said Circuit Court of Jo Daviess County Illinois by and at the suit of the President and Directors of The Town of Warren as the plaintiff against one John D. Platt as the defendant for the supposed breach of a certain ordinance alleged by the said plaintiff in said suit to have been made by them for the government of the citizens of the Town of Warren in the County of Jo Daviess aforesaid, came on to be tried in due form of Law and was then and there tried by and before the aforesaid Judge of said Court and upon such trial of the said issue the said plaintiff appeared and was then and there duly sworn as a witness for and on behalf of the said defendant in the said action before the said Circuit Court so aforesaid and took his corporal oath to speak the truth the whole truth and nothing but the truth touching

and concerning the matters in question in the said issue of the said issue. be the said judge then and there having sufficient and competent power and authority to administer the said oath to the said plaintiff in that behalf, and upon the said trial of the said issue it then and there became and was material to ascertain the truth of the matters hereafter stated to have been sworn to by the said plaintiff

And the said defendant further says that the said plaintiff being so sworn as aforesaid upon his oath aforesaid, then and there to wit on the day and year aforesaid at the County of St Davids aforesaid falsely, wickedly, willfully, maliciously and corruptly and by his own act and consent did say, depose, swear and give evidence amongst other things at and upon the said trial to and before the said Court and the Honorable Benjamin E Sheldon Judge thereof as aforesaid in effect as follows. that is to say, that he the said plaintiff was present at the election of Trustees of the Town of Warren that he left his home for the polls at said election at 4 o'clock in the afternoon, that he remained at the polls as he thought for an hour before the polls were closed, and that said polls were closed at five o'clock in the afternoon, that when the time arrived to close the polls watches were compared and the time was discussed and five minutes allowed for a difference between watches after five o'clock in the afternoon and the Clerk Mr Blaisdell announced that the polls were closed.

Whereas in truth and in fact the polls at the said election of Trustees of the said Town of Warren were not closed at or after the hour of five o'clock in the afternoon but were then and there

closed at five minutes after four o'clock in the afternoon of said day of said election.

And the said plaintiff did thereby in the said Circuit Court of Jo Daviess County Illinois so holden as aforesaid upon his said oath upon the trial of the said issue falsely, wickedly, willfully and corruptly, commit willful and corrupt perjury, wherefore the said defendant at the several times when he in the said several courts in the said plaintiff's declaration mentioned at the county of Jo Daviess aforesaid, spoke and published of and concerning the said plaintiff the said several words in the said several courts in the plaintiff's declaration mentioned to have been spoken and published by the said defendant of and concerning the said plaintiff as it was lawful for him to do for the cause aforesaid.

And this the said Defendant is ready to verify, wherefore he prays judgment &c

McClellan Hagley & Richmondest
Attorneys for Defendant "

indorsed

"Filed March 15th 1838

W. R. Broudy Clk.

Filed Aug 24, 1838.

L. W. Indian Clk. "

And afterwards, to wit on the said 16th day of November the Plaintiff filed his replication in the words and figures following, that is to say:—

vs
Anson Pising
Thomas Hicks

In the Circuit Court of
So. Davies County of the March
Term thereof A.D. 1858.

And The said plaintiff by Sweet and
Champion his attorneys for replication to
defendants first plea and wherein he has put
himself upon the country doth the like

And for replication to defendants
second plea by him above pleaded, comes and
says precludi non, because he says that at the time
where he as alleged in said plea he did not falsely,
wickedly, willfully and corruptly commit willful and
corrupt perjury and of this he puts himself upon
the country &c

And doth doth the like

McClellan & Wigley Atty for deft.

And for replication to the said defendants
third plea by him above pleaded says precludi non
because he says, that at the time where he as alleged
in said plea he did not falsely, wickedly, willfully
and corruptly commit willful and corrupt perjury
and of this he puts himself upon the country &c

Sweet & Champion

Plffs Atty.

And doth doth the like

McClellan & Wigley Atty for deft.

undered

"Filed 16th March 1858
W R Rowley. Clk."

Filed Aug 24. 1858.

L W Surtan Clk."

And afterwards on the
23^d day of March aforesaid the Plaintiff filed
his motions affidavit for a continuance in

the words following: - to wit: -

" Anson Kising
vs
Thomas Hicks

In the Circuit Court of
Jo Daviess County, of the Branch
Term, A.D. 1858.

State of Illinois }
County of Jo Daviess }

Anson Kising the plaintiff
in the above entitled cause having been first duly
sworn according to law deposes and says that he can-
not safely proceed to trial in this cause on account
of the absence of Charles Whitmore a material witness
in this cause.

This deponent also states that he expects to
prove and can prove by said Charles Whitmore
that the defendant in this suit stated of and concern-
ing the plaintiff in this suit as in his declaration is
alleged that he (meaning the plaintiff in this suit) "had
been up to Galena and sworn false (thence meaning to
charge the plaintiff in this suit with having committed
perjury). And this deponent also states that he knows of
and other witnesses by whom he can prove the same facts.

This deponent also further states that he has
caused a subpoena for said Whitmore to be issued by
the clerk of this court before the commencement of this
term of this court, that said subpoena was duly placed
in the hands of the sheriff of this county, and by him
returned without being able to find said Whitmore.
That said witness is now absent from this county, and
that it is impossible for this deponent to procure the
attendance of said Whitmore at this term of this
court, but if this cause is continued until the next
term of this court this deponent believes he can procure
the attendance of said Whitmore, and further this

deponent with oath.

Anson Kising

Subscribed and sworn before me

This 23^d day of March 1858

W R Rowley Clk

And now at this

day comes the said Plaintiff by Thos E Champion
his Attorney & moves the court to continue this cause

Thos E. Champion

Plff: Atty.

entered

Filed March 23^d 1858

W R Rowley Clk.

Filed Aug 24. 1858.

Le G P Guitreau Clk. "

And afterwards on the 26th day of March
aforesaid, the said Plaintiff filed his motion
& affidavit for a change of Venue, which
said motion & affidavit is in the words following
to wit:-

" Anson Kising

vs

Thomas Hicks

In The Circuit Court of the County
of Jo Daviess in the State of
Illinois of the May Term A.D. 1858.

State of Illinois }
Jo Daviess County }

Anson Kising of said county
being first duly sworn doth depose and say that he
is the Plaintiff in the above entitled cause, that
said cause is now pending and undetermined in
The Circuit Court of the County of Jo Daviess in said
State and this affiant further saith that he fears

that he will not receive a fair trial of said cause in said court on account that defendant in said cause has an undue influence over the minds of the inhabitants of said county and that the knowledge of such undue influence of the said defendant over the minds of the inhabitants of said county has come to this affiant on the day previous to the making of this application and not before. This affiant therefore prays for a change of venue in the said suit to some county where the said cause does not exist

Anson Rising

Subscribed & sworn to
before me this 26th day
of May A.D. 1858.
W E Rowley Clk.

indorsed
"Filed May 26th 1858
W E Rowley Clk.

Filed Aug 24. 1858.
L Wenteau. Clk. "

And the Record of the proceedings in the Circuit Court of Jo Daviess County is in the words following that is to say: -

" United States of America
State of Illinois
Jo Daviess County

Plea before The Hon^{ble} Benj^m
R Sheldon. Judge of the Fourteenth Judicial Circuit
of the State of Illinois at a regular Term of the
Jo Daviess County Circuit Court begun and held, in

enforcement of Law, at the Court House in the City of
Galena in the County of Jo Daviess and Circuit adjourned
on Monday the 17th day of May A.D. 1858.

Present Hon. Benjamin R. Sheldon Judge
A. B. Meacham States Attorney
S. K. Miner Sheriff
W. R. Rowley Clerk

Anson Kising

vs

Thomas Hicks

{ Be it remembered that
heretofore to wit on the 15th
day of March A.D. 1858 at the
March Term A.D. 1858 of said Jo Daviess County Circuit
Court, in the record of the proceedings thereof in the
above entitled cause appears the following entry
to wit

Anson Kising

vs

Thomas Hicks

{ Trespass on the case
The defendant
by M^c. Clellan, Weigley and Richman
his Attorneys comes and files his pleas

And afterward to wit on the 25th day
of March A.D. 1858 as yet of the said March Term
A.D. 1858 of said Jo Daviess County Circuit Court in
the record of the proceedings thereof in said cause
appears the following entry to wit,

Anson Kising

vs

Thomas Hicks

{ Trespass on the case.
On motion and
affidavit of Defendant it is
ordered that this cause be continued and that he
pay the costs of the present term and that

execution issue therefore

And afterwards to wit on the 26th day of May A.D. 1858 at the May term A.D. 1858 of said Jo Daviess County Circuit Court in the record of the proceedings thereof in said cause appears the following entry to wit

Anson Kising
as
Thomas Hicks

Excess on the Case for slander
Now at this day

comes the plaintiff by his attorney and files affidavit & motion for a change of venue herein which is sustained by the Court and a change of venue granted to Stephenson County

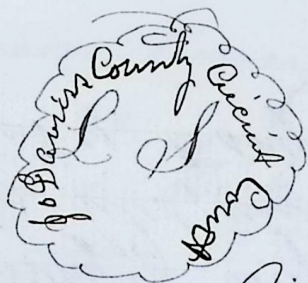
State of Illinois
Jo Daviess County

I J. W. R. Rowley Clerk

of the Circuit Court in and for said County. Do hereby certify that the foregoing is a true and correct Manuscript from the records in my office of all the proceedings in said Court in the above entitled cause wherein Anson Kising is Plaintiff and Thomas Hicks is Defendant.

And the Pice for summons marked "A" Summons marked "B" Bond for costs marked "C" Declaration marked "D" Plea marked "E" Replication to Def's Plea "F" Motion & affidavit for Continuance "G" Motion & affidavit for change of venue "H" Subpoenas marked "I" and affidavits of witnesses marked "J" are all the papers on file in said cause and are herewith transmitted to the Clerk of the Circuit Court of Stephenson County Illinois

Witness my hand and the



Seal of said Stephenson County
Circuit Court at Galena in said
County this 31st day of July A.D. 1858
Attest, W^m R. Rowley Clk.

Bill of Costs in said Cause in
Anson Rising } May Term 1858. for Davies Co
as } Cir Court.

Thomas Hicks	Plyffs costs	
Docket " suit 10¢ & Ent ap of Plyffs atty 15¢		25
Issuance of fil 3 subp. 0.8 1.20 Ent & fil 7mo for change of venue 25¢ 45		
Spr 7 th affor do. 10¢ & 6¢ of witnesses 60¢		70
Ent order for change of venue		20
mak ^r & Ent & Bill of Costs & Copy		50
Certificate of seal		35
Transcript of certificate		1.50
Sheriff's fees		8 4.95
Printer Execut & ret subps		12.70
Witnesses W ^m Cain 1 day & 26 miles	8 2.30	17.65
" John B Platt 2 " 26 "	3.30	
" Charles Whitmore 2 days & 26 miles	3.30	
" J & H Dobler 2 " 26 "	3.30	
" J W Levee 2 " 26 "	3.30	
" J Payne 3 " 26 "	4.30	19.80
		\$ 37.45

State of Illinois }
for Davies County } J. S. Wm R. Rowley Clerk of the
Circuit of said County do hereby
certify that the foregoing is a true copy from my fee
book

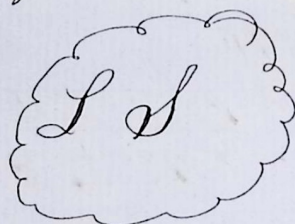


Witness my hand and the
seal of said court, this 31st day of July
A.D. 1858
Wm R. Rowley Clk.

Anson Rising } May Term 1858, for Daviess Co. Cir. Court
 as } Deft's Costs
 Thomas Backs }

Ent appearance of Deft & Attys	.15 ⁰
Securing & fil ^g Subp 40 ⁰ & fil ^g juce 5 ⁰	.45 ⁰
Tak ^g Affidavit of witness	.10
mak ^g & Ent ^g Bill of costs & copy	.30
Certificate & seal	.35 ⁰
Sherriff's fees	\$1.55
Miner's excec ^g & ent ^g Subp	1.65
Witness Chas ^g J. Hunt 2 days 26 miles	\$3.30
	\$6.50

State of Illinois }
 for Daviess County } J. Wm. R. Rowley Clerk of
 The Circuit Court of said County
 do certify that the foregoing is a true copy from my
 fee book



Witness my hand and the seal
 of said court this 31st day of July
 A.D. 1858
 W R Rowley Clerk.

entered

"Filed Aug 24, 1858
 L W Gullett Clk."

And afterwards to wit: on the 27th day
 of September A.D. 1858, a Bill of Exceptions to the
 order changing the venue hereof from the
 County of Stephenson to the County of Lee
 was filed, and is in the words following
 that is to say:—

Anson Kising } In The Circuit Court of Stephenson
 as } County, Of The September Term
 Thomas Hicks } A.D. 1858.

Be it remembered that on this fifteenth day of September A.D. 1858. At the September Term of the Circuit Court holden in and for the County of Stephenson and State of Illinois came out to be heard in the above entitled cause the motion of the defendant heretofore filed for a change of venue in said cause which motion was made upon the following affidavit to wit

"In the Stephenson County Circuit Court,
 of the September Term A.D. 1858,

Anson Kising }
 as } Case
 Thomas Hicks }

Thomas Hicks the defendant in this suit being first duly sworn on his oath saith that he fears he will not receive a fair trial of this cause in this court for the reason that the plaintiff has an undue influence over the minds of the inhabitants of Stephenson County where this suit is pending and that the same cause exists in the County of Wabash. This affiant therefore prays that the venue of this cause be changed to a county where the cause aforesaid does not exist.

Subscribed and sworn to } Thomas Hicks.
 this 15th day of September 1858 }
 L. W. Guntew Clk.

Which motion after argument of counsel was granted by the court and the venue of said cause was ordered to be changed and after such order the parties agreed upon Lee County as

term of Court the following among other proceedings were had in said Court in a certain suit then pending, wherein Anson Rising is plaintiff and Thomas Hicks is Defendant, to wit;

402 Anson Rising
vs
Thomas Hicks } Trespas on the case
Now comes the said defendant
by his attorney and files his
affidavit for a change of venue in this suit.

And afterwards, to wit; on the 16th day of September 1858 at said term of Court the following entry appears of record in said cause

402 Anson Rising
vs
Thomas Hicks } Trespas on the case
On petition of said defendant by
his attorney, and affidavit so file

It is ordered that the venue in this suit be changed to the County of Lee in the State of Illinois; and that the Clerk of this Court transmit to the Clerk of the Circuit Court of said Lee County, a transcript of the Record herein together with all the papers on file appertaining to this suit.

State of Illinois } ss
Stephenson County } I Luther W Luteau
Clerk of the Circuit Court in

and for said County in the State aforesaid,
Do hereby certify that the foregoing is a full and complete transcript from the Records of this Court of all the proceedings had in the above entitled cause, wherein Anson Rising is plaintiff and Thomas Hicks is defendant as appears from

said Records, and that the Piece marked "A",
 runs "B", Bond "C", Declaration "D", Pleas "E",
 Replication "F", Affidavit "G", Pet for chg venue "H",
 4 Subpas "I", Seven Mot aff "J", Pet for chg venue "K",
 aff "L", 2 Subpas "M", 3 Mot Affidavits "N" and Bill of
 exceptions "O" are all the papers on file appertaining
 to said cause and are herewith transmitted to
 the Clerk of the Circuit Court of Lee County

ES

In witness whereof I have
 hereunto set my hand and seal
 at Freeport in said County this
 6th day of May A.D. 1857
 L W Guntew Clerk
 By Geo North Dep

Bill of Costs in said Cause
 "Anson Kising vs Thomas Hicks
 Chg venue to Lee County
 Plffs costs

Enty aff & atty 15 Doc sent 10	filg 20 papers 8/100	1.25
filg Peace for Subpa 5 Subpa 4	filg 40 sent aff 5 Mot aff 30	.75
Makg & Enty BC 30	Copy Do 20	att 15 real 35
		85
		2.85

Sheriff's fees 9	Gilbreath Const 1	2.50
		5.35

Witnesses - J Payne	2 days 50 miles	4.50
Charles Whitmore	2 days 50 "	4.50
A Hyde	2 " 50 "	4.50
		13.50
		18.85

Defendants cost

Enty app & atty 16. Enty & fily Pet & off for C. C. 25. 40
 " Chg 6 20^c one for Do 20^c Transcript of f. & seal 81.³³ 1 85-
 Bill cost 36^c Copy Do 26^c Aff seal 35^c 85-
 3.00

State of Illinois
 Stephenson County



I Luther W Guleau Clerk
 of the Cir Court in and for said
 County. Do hereby certify that the foregoing
 is a correct copy from my Fee Book
 Witness my hand and the seal of
 my office this 6th day of May A.D. 1859
 L W Guleau Clerk
 By Thos North Dep

Entered

"Filed May 6th A.D. 1859

J S Boardman Clerk.

for Joseph Ball D.C. "

And on the 2^d day of May A.D. 1859 the
 Depositions with notice annexed in said cause
 were filed in the Sec County Circuit Court
 and are in the words and figures following, to wit:-

Anson Rising } In the Circuit Court of Sec County
 do } Illinois vs The Apul Term
 Thomas Hicks } A.D. 1859.

Action of trespass on the case

vs Thomas Hicks defendant in the above entitled
 cause

Hereby notified that I have filed in
 said cause the necessary affidavit as required by law
 showing that James W. Leeverett, James Payne, Charles
 Whitmore and William Cain are material witnesses
 in said cause and that said witnesses do not reside
 in the County of Lee where said cause is pending.
 You will therefore take notice that on the 10th day
 of March A.D. 1859 between the hours of nine o'clock
 A.M. and five o'clock P.M. of said day and continuing
 from day to day if necessary, at the Office of Stephen
 P. Shaw in Warren, County of Jo. Davis and State
 of Illinois, and before the said Stephen P. Shaw a
 Justice of the Peace of said County of Jo. Davis, I shall
 proceed to take the depositions of the said James
 W. Leeverett, James Payne, Charles Whitmore and
 William Cain to be read as evidence on the trial of
 the above entitled cause, at which time and place
 you can appear and cross examine said witnesses
 Dated February 24th A.D. 1859.

Yours &c

Anson Rising

Served the within notice on the within named
 Thomas Hicks by reaching the same to him and also
 by leaving with him a true copy of the same

This 24th day of February A.D. 1859

J. H. Coulter Sheriff.

Jo. Davis's County, Illinois.

J. H. Coulter dep.

Sheffs Fees

2 miles travel 10

serving 50

returning 10

70

Anson Kising } as In the Circuit Court of Lee County
 as } Illinois, do the April Term 1
 Thomas Hicks } A.D. 1857

Action of Trespass on the Case

Depositions of James W. Leveitt, James Payne,
 Charles Whitmore and William Cair of Jo Daviess
 County and State of Illinois taken before Stephen B
 Shaw, Police Magistrate and Justice of the Peace in
 and for said County and State in pursuance of the
 foregoing notice in the presence of the said Plaintiff
 and said defendant and on the part of said
 Plaintiff

State of Illinois } as
 Jo Daviess County }

Charles Whitmore being first duly sworn
 deposes and says as follows viz:

Interrogatory 1st State your name age and occupation and residence
 Answer Charles Whitmore aged 28 years occupation head mone,
 residence Warsaw Illinois Jo Daviess County.

Interrogatory 2^d Do you know the parties Plaintiff and defendant
 in the title of these depositions named or either and
 which of them and how long have you known them
 either and which of them

Answer Knows both the plaintiff and defendant has
 known Thomas Hicks about six years, has known
 the plaintiff about 3 years.

Interrogatory 3^d State now if you were present on or about the 27th day of
 November 1857 with Thomas Hicks the defendant in the
 title of these depositions named and heard him the
 said defendant make any statements in regard to
 Anson Kising the plaintiff in these depositions
 named and if so state when and where and also

fully and particularly in regard to said statements
(Objected to by defendant's counsel)

Answer

Mr. Hicks came into the Hardware Store of Whitmore and Hafford in Waver the 27th day of November 1857. I heard Thomas Hicks say that Anson Rising had been into Galena and sworn false and that he could prove it by Porter Cobb and so and that was all he said in particular that I remember.

Interrogatory 4. State if you know what Thomas Hicks referred to when he said that Anson Rising had been into Galena and sworn false as stated in your answer to the last Interrogatory above propounded to you
(Objected to by defendant's counsel)

Answer

He Thomas Hicks came into the store and said that the corporation had beat in their suit. Then spoke of Mr Rising and said what was stated above.

Interrogatory 5th State if you know what suit ~~suit~~ was referred to by Thomas Hicks in the conversation above stated by you

Answer Suit of the Trustees of the Town of Waver Plaintiff, and John D Platt defendant in the Circuit Court of Jo Davies County

Interrogatory 6th State now if you were present on the trial of said suit in the Circuit Court of Jo Davies County and if so whether or not the said Anson Rising was sworn examined and gave his testimony as a witness on the trial of said suit.

Answer I was present at the trial of said suit I heard from Anson Rising sworn and heard him testify as a witness

Interrogatory 7th State if any time previous to the first day of January 1858 in your presence you have heard the defendant in the

Tells of this deposition wanted make any statements or statements to you or any other person or persons in regard to the plaintiff in the title of this deposition wanted) having sworn false or committed perjury and if you answer you state when where and fully and particularly what such statement or statement was? (Objected to by defendant's counsel)

Answer Thomas Hicks came into the store of Whitmore and Gafford in Warren Co. Davie's County Illinois November 27th 1857 and commenced conversation with a gentleman that was in the store at the time and said that Mr. Kising had been into Galena and sworn false and that he could prove it by Porter Cobb and so.

Cross examination

X Int 1st Did you ever hear more than one conversation between the defendant and other persons in regard to the matter of Mr. Kising's testimony on the trial of which you have spoken in your direct examination?

Answer I never did that I can swear to at any positive time. I have heard other conversations but cannot swear to the time that I heard them.

Int 2 Who was present at the conversation that you have sworn to in your direct examination and what time of the day did it take place?

Answer A. Hyde was present, between 9 and 10 o'clock in the morning.

Int 3. Do you pretend to give more than one conversation in your direct testimony?

Answer I do not.

Int 4 Do you give the exact language of Thomas Hicks and all that he said in the conversation you have stated, or merely the substance of what you understood him to say?

Answer I gave the exact language as far as I have sworn to as near as I can recollect could not swear that I heard all the conversation.

Int 5 Have you stated all that you did hear of said conversation?

Answer All that I heard that I remember in reference to his swearing false.

6 How do you undertake to state the precise words used by the defendant in said conversation?

Answer Because I was a witness for the corporation in said suit because I knew that Mr. Hick was against the corporation.

7th Did you make any memorandum in writing of the language you have sworn to at the time of said conversation or at any other time?

Answer I made no memorandum at the time but did after the time as near as I could recollect the words

8th When did you make this memorandum?

Answer About the first of December 1857.

9 How did you come to make this memorandum.
(Objected to by plaintiffs' Atty.)

Answer Because I was requested to by Anson Kising

10th Did you have any conversation with Anson Kising in regard to this matter about which you have been sworn if so what was it?

Answer I did have conversation with him. The substance of it was that Kising asked me if Hicks was in the store and said anything about him, then wanted to know what he did say and I told him just what I have sworn to.

11th Did you ever hear the plaintiff Kising say that he would give any money to any person who would swear to what Mr Hicks the Defendant might have said about him or any thing to that effect?

(Objected to by plaintiffs counsel)

Answer I do not remember that I ever heard him say that he would give any money.

12 State what you did hear the plaintiff say!

(Objected to by the plaintiffs counsel)

Answer I conversed with Mr Kising on several occasions and heard him say if he could prove so and so that he could make Mr Hicks smart, he said he would give something if he could prove so and so

13 Do you know whether the testimony of the plaintiff Kising on the trial of which you have spoken on your direct examination was true or false?

(Objected to by plaintiffs counsel)

Answer Does not know whether it was true or false.

14 With whom did the conversation you have under taken to give in your direct examination take place?

Answer. It was directed to Hyde

Reexamined by Plaintiff

Int. 1st State if in your answer to the 12th cross interrogatory propounded to you, you mean to be understood to say that Rising made any offer of money or property to you or any other person to testify to any particular fact suggested by him

Answer I never heard him say that he would give any property or money of any kind to any person.
Charles Whitmore

State of Illinois } 20
Jo Daviess County }

James Payne sworn deposes and says as follows viz:

Interrogatory 1st State your name age occupation and residence

Answer name is James Payne, age 24 years, occupation mason, residence Warren Jo Daviess County Illinois.

Int. 2^d Do you know the parties, plaintiff and defendant in the caption of these depositions named or either and which of them and how long have you known them or either and which of them

Answer Known both plaintiff and defendant, has known the defendant ten or eleven years, has known the plaintiff three or four years.

28
Int.

§ State if you were present on or about the 27th of November 1857 with Thomas Hicks defendant in the caption of these depositions named and had any conversation with him or heard him have any conversation with other persons in regard to Anson Kising the plaintiff in the caption of these depositions, and if so, state when, where and fully and particularly what the defendant said in said conversation or conversations.
(Objected to by defendants counsel)

Answer I was present with Thomas Hicks and many others on the 27th of November 1857, in front of Mr. Dobler's brick store in Warren Co. Davies County Illinois. I heard some men talking about the suit between the Trustees of the town of Warren and John D. Platt. Mr. Hicks came up during this conversation and said that Mr. Kising had sworn false and we could prove it.
The remainder of this answer was excluded by the Court

Int 4 State what the defendant referred to in his conversation when he said that Mr. Kising had sworn false. (Objected to by defendants counsel)

Answer For a reference to Mr. Kising's testimony in the suit between the Trustees of the town of Warren and John D. Platt.

Int 5th State if at any time previous to the first day of January 1858 you have heard the defendant in your presence make any statement in regard to the plaintiff's having sworn false or committed perjury and if you answer yes state when, where, and fully and particularly what such statement was.
(Objected to by defendants)

Answer I have heard him make the statement given in
my answer to the third Interrogatory propounded
Cross examined

Int. 1st How do you fix the time of this conversation you
have attempted to give?

Answer Have not fixed any particular time it was right away
after this and above spoken of.

Int. 2^d Who else was present?

Answer Mr. A. Hyde, was a good many present could not
mention all their names, Mr. Dobler, Mr. Francis,
do not think of any more now.

Int. 3^d Do you give the exact language of Mr. Hicks or
merely the substance of it?

Answer Merely the substance of it.

Int. 4th [How do you know what Mr. Hicks meant where
you say in answer to the third direct interrogatory
meaning the town of Waver

Answer [We were in this place the town of Waver and he
said this place

Reexamined
Int. 1st Do you pretend to give the exact language of Mr. Hicks
as stated in your third direct interrogatory as far as you
give conversation heard by you on that occasion?
(Obj. to by defendant)

Answer I do not pretend to give the exact language.

Int. 2 State the time when this conversation mentioned in your answer to the ^{3^d} interrogatory took place as near as you can and how you fix the time if you have any means of fixing it.

Answer About November 27th 1857, could not say exactly, I have nothing to fix the date by but that suit. It was after the suit I think it was the next day after.

James Payne.

State of Illinois }
for Daviess County }

William Cain being first duly sworn deposes and says as follows viz:

Interrogatory 1st State your name, age, occupation and residence.

Answer Name is William Cain, age 44 years, engaged in no business at present, residence Hanch, for Daviess County Illinois.

Int. 2^d Do you know the parties plaintiff and defendant in the caption of these depositions named or either and which of them and how long have you known them or either and which of them

Answer I know both plaintiff and defendant and have known the plaintiff some three or four years and have known the defendant ten or twelve years.

Int. 3^d State if you were present with the defendant on or

about the 27th day of November 1857 and heard him have any conversation with you or any other person in regard to the plaintiff and the testimony given by him on the trial of a suit between The President and Trustees of the Town of Hansen and John D. Platt and if so state when and where such conversation was and state fully and particularly what the defendant said in such conversation.

(Objected to by deft,

Answer It was not many days after the suit named in the interrogatory in front of Mr. Dobler's store I heard some conversation when I came up. Mr. Hicks and A. Hyde and Joseph Dobler were the three men that appeared to be engaged in conversation concerning the result of this suit decided in Galena. Some one made the remark that the suit was decided in Galena against Platt on the strength of Mr. Rising's evidence. Mr. Hicks said that from the account of Joseph and Mr. Platt that Mr. Rising had perjured himself. I think he said he had no better than perjured himself when he got his wife from what Esq. Gisdell told him. He said Mr. Gisdell told him that Mr. Rising said ^{he was worth} so many dollars (does not recollect the number) and that he had not that many cents.

Q. 4 Have you stated all that the defendant said in that conversation?

Answer I have stated all that I can recollect. There was other conversation that I cannot recollect.

Q. 5th Now state if the persons you have named were engaged in conversation when you came up and

about the 27th day of November 1857 and heard him have any conversation with you or any other person in regard to the plaintiff and the testimony given by him on the trial of a suit between The President and Trustees of the Town of Hansen and John D. Platt and if so state when and where such conversation was and state fully and particularly what the defendant said in such conversation.

(Objected to by deft,

Answer It was not many days after the suit named in the interrogatory in front of Mr. Dobler's store I heard some conversation when I came up. Mr. Hicks and A. Hyde and Joseph Dobler were the three men that appeared to be engaged in conversation concerning the result of this suit decided in Galena. Some one made the remark that the suit was decided in Galena against Platt on the strength of Mr. Rising's evidence. Mr. Hicks said that from the account of Joseph and Mr. Platt that Mr. Rising had perjured himself. I think he said he had no better than perjured himself when he got his wife from what Esq. Gisdell told him. He said Mr. Gisdell told him that Mr. Rising said ^{he was worth} so many dollars (does not recollect the number) and that he had not that many cents.

Int. 4 Have you stated all that the defendant said in that conversation?

Answer I have stated all that I can recollect. There was other conversation that I cannot recollect.

Int. 5th Now state if the persons you have named were engaged in conversation when you came up and

also if they were still in conversation when you left

Answer They was both when I went up and when I left.

Int. 6 State if you have heard any other conversation or statements by the defendant in regard to the plaintiff or in regard to the testimony given by him on the trial above referred to and if so state when and where and fully and particularly what the defendant said

Answer I have heard other conversations but cannot give them
Cross examined.

Int. 1st Do you pretend to give the exact language of the conversation of Mr. Hicks or merely the substance and tenor of the same?

Answer I have given it as near as I can recollect

Int. 2^d Do you swear that you have given the identical words spoken by the defendant or other similar or equivalent words?

(Objected by plaintiff)

Answer I have given as near as I can recollect.

Int. 3 Do you swear positively that the words given by you in your direct examination as the words of the defendant were the very identical words spoken by him on the occasion you have spoken of?

Answer I think that Mr. Hicks used those words just as I have given them in.

Int. 4th Did not Mr. Hicks say that if what Joseph and Mr. Stodd

said about Rising's testimony was true that Rising had perjured himself or would to that effect?

Answer He said from the conversation that he had with Joseph and Mr. Platt that Mr. Rising had perjured himself.

Int. 5th Did the defendant state what you have sworn to more than once on that occasion?

Answer I did not hear him.

Int. 6th Where was Mr. Hicks during this time?

Answer In front of Dotle's store.

Int. 7th Have you had any conversation with the plaintiff in regard to this suit?

Answer I have had some.

Int. 8 Did not the plaintiff threaten to institute a similar suit against you?

(Objected to by plff)

Answer I believe he did.

Int. 9 Did he or did he not agree with you that if you would testify in his suit against Hicks that he would not prosecute you?

(Objected to)

Answer He never spoke to me in that way.

Int. 10. How did he speak and what did he say?

Answer I have known the plaintiff and defendant and they are

Answer

He said he had learned from good authority that Mr. Hicks and myself and Mr. Platt had been saying things to injure his character and he thought that he could sustain a suit against us but he did not think that either Platt or myself intended any injury against him he said his main object was to vindicate his character and he thought the course that Mr. Hicks had taken was to injure him all he could.

Int.

11th Did the plaintiff never either directly or indirectly intimate to you that if you would testify what you knew in this suit against Hicks that he would not sue you
(Obj^t to)

Answer

He said I do not want to injure any one but he should vindicate his character to the last or to that effect, he did not think that Mr. Platt nor myself had done anything with the intention of injuring him, but thought Mr. Hicks had.

Re-examined

Int.

12th Did the plaintiff ever say to you or in your presence that he should institute a suit against you?

Answer

I do not remember that he did just in those words.

Int.

2 Did he, the plaintiff in any form of words say that he would institute a suit against you and if so what did he say upon that occasion?

Answer

He said he thought he could sustain a suit against all three of us, Hicks, Platt, and myself.

Int.

3 Is that all the threat he the plaintiff ever made in your presence and hearing about commencing suit against you?

Answer He said from what he had heard that Platt and me should have said he thought at one time that he should put us all through but he was satisfied that we Platt and myself did not want to injure him and that he should not now prosecute us

Int. 4. Was this conversation the only conversation you had with the plaintiff in which he the plaintiff threatened or intimated that he intended to prosecute you?

Answer This is the only one that I recollect.
W^m " Cair.

State of Illinois } ss
Jo Davies County }

James W Leverett being first duly sworn
deposes and says as follows viz,

Interrogatory 1st State your name, age, occupation and residence

Answer My name is James W Leverett, age is 28 years, occupation Farmer, residence Warren Jo Davies County Illinois

Int. 2^d Do you know the parties plaintiff and defendant in the caption of these depositions named or either and which of them, and how long have you known them or either and which of them

Answer I have known the plaintiff and defendant about three years

Int. 3^d Did you know of a suit between the President and

Justices of the Town of Warren and John D. Platt in the Circuit Court of Jo Daviess County, Illinois if so state when said suit was tried and determined and also state whether the plaintiff in this suit was produced, sworn, examined and did give his testimony as a witness in said suit.

Answer I did know of such a suit and the trial commenced in the Circuit Court the 25th of November 1857 and closed the 26th and further state that the plaintiff in this suit was sworn and examined and did give his testimony on the trial of the suit of the President and Justices of the Town of Warren and John D. Platt on the part and in behalf of the President and Justices plaintiffs in said suit.

Int. 4th State if you were present and heard the testimony given by the plaintiff on the trial of said suit.

Answer I was

Int. 6 State the testimony of the plaintiff given by him on the trial of said suit.
(Obj'd to by def't)

Answer The plaintiff was asked at what time the polls were closed and testified that he left home at 4 o'clock and walked leisurely to the polls and voted and remained at the polls an hour as nearly as he could judge. He was then asked to say at what hour the polls were closed and answered that the officers of the election announced that it was time for the polls to close. The question was asked, was not the time for closing the polls discussed and a comparison of watches had, the plaintiff answered that the time was.

discussed and watches compared and an allowance made for variations of watches and that it was decided that the time had arrived. The plaintiff (Kising) was asked if he saw the watches and knew that it was time for the polls to close, he answered that he saw the watches but did not define the time. The plaintiff (Kising) was questioned with regard to the accuracy of his own time piece, and stated that he considered it reliable, and that judging from his time piece and from the time spent in going to and remaining at the polls he should think that the polls closed at 6 o'clock. He was then asked if he was willing to swear that the polls closed at 6 o'clock, and answered that he was not willing to swear except from his own time piece. But being urged to swear yes or no, he said that if compelled to say yes or no he should from his best knowledge and belief with regard to the time say, yes. The above is substantially the testimony of the plaintiff (Kising) given by him on the trial above referred to.

Interrogatory 5th State if you were one of the parties to the suit above referred to and also whether or not you charged your memory particularly in regard to the testimony given by the plaintiff (Kising) on the trial of said suit.

Answer I was one of the parties interested in said suit and took particular notice of the testimony given by plaintiff in said suit.

Int. 6 State whether or not you have given substantially the whole of Mr. Kising's testimony in said suit.

Answer I have all I remember

7 Now state whether Mr Kising did swear positively in regard to the time of closing the polls or whether his answers were qualified in any way and if so how.
(Objected to by deft)

Answer I did not regard his testimony as positive it being qualified by reference to his own time piece and to his individual belief in the case.

Ind. 8. State what kind of a time piece Mr Kising referred to as his in speaking of the time in his testimony
(Objected to by deft)

Answer He referred to his clock

Ind. 9. State whether Mr Kising gave any testimony on said trial except in regard to the time of the closing of the polls

Answer I think not

Cross examined.
Interrogatory 1st Did you ever take down the testimony of Kising in writing?

Answer I did not

Ind. 1st Do you pretend accurately to give the plaintiff's testimony on said trial at this length of time merely from your own memory?

Answer I do to give it substantially.

Ind. 3. How do you know that the plaintiff referred to his clock as stated by you in your answer to the 8th Interrogatory

Answer Because he used the word clock in his testimony.

Interrogatory: Do you know of your own knowledge whether the testimony given by said Plaintiff on said trial as to the time of closing the polls was correct or not

Answer I do not

Re-examined

Interrogatory: Was there ever at any time any suit depending in the Circuit Court of Jo Daviess County Illinois between the President and Trustees of the Town of Kewanee and John D. Platt then the one above referred to and in which Anson Kising the plaintiff in this suit testified as a witness.

Answer There never was any other suit.

James W. Leveillé.

State of Illinois } ss
Jo Daviess County }

I Stephen P. Shaw a police magistrate and Justice of the peace in and for said County do certify that the foregoing depositions were taken by me at my office in Kewanee on the 10th day of March A.D. 1859, that the said witnesses were first duly sworn and that the same was carefully read to witnesses and signed by them

Dated this 10th day of March }
A.D. 1859 }

Stephen P. Shaw P.M. and J.P.

Justice Fees \$ 7.45
Sheriff " 70
Constable A. Burnett } 70
Serving Subpoena }
James Payne & Co. 50
William Cain " 50
\$ 9.85

State of Illinois
 Jo Davis County

I Richard Seal Clerk of the County Court in and for said County do hereby certify that Stephen P. Shaw whose name appears subscribed to the foregoing Certificate of Depositions is now and was at the time of subscribing the same and was at the time of taking said Depositions an acting a Police Magistrate and Justice of the Peace in and for said County regularly commissioned and qualified and that as such Police Magistrate and Justice of the Peace full faith and credit is due to all his official acts, and further that I am well acquainted with his signature and truly believe the same to be genuine.



In Testimony whereof I have hereunto set my hand and affixed the seal of the said Court at Galena in said County this 22^d day of March 1859.
 Attest Richard Seal Clerk.

Endorsed

"Opened & Filed May 2^d 1859
 A. B. Boardman Clk."

And on the fifth day of May A.D. 1859 the Defendant filed his motion to dismiss this suit in the words following to wit:—

"State of Illinois } In Circuit Court May Term
 Lee County } 1859

Anson Rising
 vs
 Thomas Hicks

And the said defendant Thomas Hicks by Mc Clellan & Weigley his attorneys come and move the court to dismiss this suit: and for cause shows,

1st There is no proper & sufficient transcript of the record from the County of Stephenson as required by the Statute

2^d It appears from the statement of the clerk of the Stephenson County Circuit Court that the proceedings which he undertakes to certify were in another suit and between different parties wherein one Andrew Rising was the plaintiff.

3^d The statute requires that a transcript should be had from the records of the Circuit Court of Stephenson County whereas a mere abstract of said record in said cause has been transmitted by the clerk of the Stephenson Circuit Court.

Wherefore def^t prays that said suit may be dismissed for said reasons and because this Court has no jurisdiction of the same

Mc Clellan & Weigley
Attys for def^t

signed

"Filed May 5th 1859

J. S. Boardman Clerk."

And on the 6th day of May aforesaid the said Defendant filed his motion to suppress deposition, which is in the words following to wit:-

" State of Illinois	{ In Circuit Court May
Lee County	{ Term 1859,

Anson Rising	{
Thomas Hicks	{

And the said defendant by McClellan & Weigley his attorneys come and moves the Court to suppress the depositions taken in this case for the reason that the same are not certified according to law and for other good reasons

McClellan & Weigley
Atty. for Deft.

answered

" Filed May 6. 1857.

J. S. Boardman

Clerk. "

And the instructions given in said cause are in the words and figures following, to wit;

" Anson Pasing
vs
Thomas Hicks

Plff. asks the following
Instructions.

" Given

1st The plaintiff to entitle him to recover need not prove all the identical words charged in the declaration but proof of the substance of the identical slanderous words is sufficient.

" Given

2^d The words charged in this case are actionable of themselves made so by statute and if the jury believe from the evidence that the plaintiff has proved them as laid in his declaration then they must find for the plaintiff unless the evidence fully sustains the defendants pleas of justification.

3^d That to sustain a plea of justification alleging that the plaintiff committed the crime of perjury, the same strictness of proof is required as would be necessary to convict in a criminal prosecution for such crime and the defendant must not only show that the plaintiff swore false but that he did so willfully, conspicuously and knowingly and if the evidence shows that the defendant had failed to do so in this case then they must find for the plaintiff if they further believe from the evidence that the defendant spoke the slanderous words charged.

15th Dec 48 - 9
Bailey & Banks

c Given

4th That it is a question for the jury to determine whether the pleas of justification were interposed by the defendant in good faith and with a bona fide expectation of proving the same or not, and if the jury believe from the evidence that such pleas were interposed in this cause frivolously and without any reasonable expectation of sustaining such pleas then the jury may consider such pleas a repetition of and aggravation to the slander and consider it in estimating the damage

15th Dec. R.
426 Sloan -
as Petrie

c Given

5th Where the words spoken are made actionable by statute or are so of themselves it is not necessary to prove any special damages in order to entitle the plaintiff to recover

c Given

6th In estimating the damages in an action of slander the jury may take into consideration the pecuniary circumstances of the defendant and where the charge is proved to have been willfully and maliciously made the damages are not merely to compensate the plaintiff but also to punish the defendant

c Given

Deft's Instructions.

1st

Given

In slander the plea of justification not sustained should not, necessarily, enhance the damages. - If the defendant pleads a justification in the honest belief that he will be able to sustain it on the trial he ought not to be punished for so doing, though he fail to establish it to the satisfaction of the jury. And if the jury believe from the evidence in this case that the defendant filed his pleas of justification in good faith, expecting to sustain them by proof, then the jury should not consider those pleas in aggravation of damages, even though he may have failed to prove the pleas.

2d

Given

If the jury believe from the evidence that the conversation referred to in the testimony of Payne, Cair and Dobler as having taken place in front of Dobler's store was one and the same conversation, then the whole of the conversation of the defendant in regard to the plaintiff should be taken into consideration by the jury and if the jury further believe from the evidence that the Deft at the same time and place in the same conversation so qualified his statements as not to charge the plaintiff with false swearing or perjury and did not then and there convey to the minds of the hearers the idea or impression of such charge, then as to that conversation the defendant is not guilty.

indorsed

"

" Filed May 7th 1857.

J. S. Boardman Clerk. "

And the Verdict in said cause is in the words following to wit:

" We the jurors find the issues for the Plaintiff and assess the damages at one thousand dollars.

H. E. Williams.
A. L. Osborn.
W. A. Killion.
O. O. Barker
William Holden.
W. S. Colwell
John A. Hunt
Elisha Pratt
Solomon Benton
C. W. White
William Garrison
Benson Fowbridge.

indorsed
" Filed May 7. 1859.
J. S. Boardman Clerk. "

And on rendition of the above Verdict the Defendant entered his motion for a new trial in the words following that is to say

" Anson Kizing { Circuit Court of Lee County
as { of the May Term A.D. 1859.
Thomas Hicks { Case for slander - Change of
venue from Co. Davies and
Stephenson Counties

Now at this day comes the said defendant and moves the Court for a new trial in the above entitled cause, for the following reasons.

1. Because The verdict is contrary to the evidence.
2. Because The verdict is against the weight of evidence
3. Because The verdict is contrary to law and the evidence
4. Because The Court gave improper instructions for the plaintiff.
5. Because The Court improperly excluded the evidence of the defendant
6. Because The admitted improper evidence for the plaintiff.
7. Because The damages are excessive.
8. And for other good and sufficient reasons appearing in the face of the papers

McClellan & Weigley & Sonall
Atty for Defendant. "

endorsed

"Filed May 7th 1859.

J. M. Boardman,

Clerk. "

And on the 14th day of May aforesaid the Defendant filed the following Unsworn Bill of Exceptions in said cause in her troba -

" State of Illinois } So In Circuit Court of May
Loce County } Term 1859.

Anson Rising

vs

Thomas Hicks

Be it remembered that this day

This cause came on to be tried before The Honorable John O. Eustace Judge of a jury, and before the said cause was called for trial the said defendant moved the court to suppress the depositions of the plaintiff taken in said cause and filed his reasons therefor as follows

State of Illinois } ss In Circuit Court May
Lee County } Term 1859.

Anson Kising }
vs }
Thomas Hicks }

And the said defendant by McClellan & Weigley his attys comes and moves the court to suppress the depositions taken in this case, for the reason that the same are not certified according to law, and for other good reasons.

McClellan & Weigley, attys judge
Which motion was overruled by the court, to which ruling of the court defendant then and then excepted. Defendant also moved the court before said trial to dismiss said suit and filed his reasons as follows. To wit;

State of Illinois } ss In Circuit Court May
Lee County } Term 1859.

Anson Kising }
vs }
Thomas Hicks }

And the defendant Thomas Hicks, by McClellan & Weigley his attorney come and move the court to dismiss this suit and

Cause shoas

1st

There is no proper and sufficient transcript of the Record from the County of Stephenson as required by the Statute.

2^d

It appears from the statement of the Clerk of the Stephenson County Circuit Court that the proceedings which he undertakes to certify were in another suit and between different parties where in one Andrew Rising was the plaintiff

3^d

The Statute requires that a transcript should be had of and from the Records of the Circuit Court of Stephenson County, whereas, a mere abstract of said Record, in said cause has been transmitted by the Clerk of the Stephenson County Circuit Court.

Wherefore Deft prays that said suit maybe dismissed, for said reasons and because this court has no jurisdiction of the same

McClellan & Wigley

Atty for Deft

And plaintiff made his motion to withdraw said transcript, which motion of the defendant was overruled by the Court and defendant then and there excepted to said ruling of the Court.

The plaintiff then asked leave to withdraw said transcript which was granted and the Clerk of Stephenson County Circuit Court amended the said transcript from "Stephenson County Circuit" by erasing the word "Andrew" and inserting instead the word "Anson" and erasing the word "abstract" and inserting the word "transcript" and then re-filed said record, whereupon the said

defendant moved the court for a continuance of said cause to the next term of this court, which said motion was overruled by the court to which ruling of the court defendant then and there excepted.

The cause was then called for trial and a jury empannelled and the plaintiff to sustain his case read in evidence the following depositions.

(Caption to Depositions herin before inserted)

State of Illinois } ss
 Jo Daviess County }

Charles Whitmore being first duly sworn, deposes and says as follows, to-wit:
 Interrogatory 1st State your name age and occupation and residence

Answer. Charles Whitmore, age 28 years, occupation head mow, residence Union Illinois Jo Daviess County.

Int^r 2nd Do you know the parties plaintiff and defendant in the title of these depositions named or either and which of them and how long have you known them or either and which of them?

Ans Knows both the plaintiff and defendant has known Thomas Hicks about six years, has known the plaintiff about 3 years

Int^r 3^d State now if you were present on or about the 27th day of November 1857, with Thomas Hicks the defendant in the title of these depositions named, and heard him the said defendant make any statements in regard to Anson, being

The Plaintiff in these depositions named
and if so state when and where and also fully
and particularly in regard to said statements
(Objected to by defts Counsel)

Ans

Mr. Hicks came into the Hardware store
of Whitmore and Gafford in Danvers the 27th
day of November 1834. I heard Thomas Hicks
say that Anson Rising had been into Galena
and sworn false and that he could prove it by
Porter Cobb and so, and that was all he said
in particular that I remember

Int

4th State if you know what Thomas Hicks refer-
ed to when he said that Anson Rising had been
into Galena and sworn false as stated in your
answer to the last interrogatory above propoun-
ded to you.

(Objected by defts Counsel)

Ans.

He Thomas Hicks came into the store and said
that the corporation had beat in their suit.
then spoke of Mr Rising and said what was
stated above

Int

5th State if you know what suit was referred to by
Thomas Hicks in the conversation above stated
by you

Ans

Suit of the Trustees of the town of Danvers
Plaintiffs and John D. Platt defendant in
the Circuit Court of Jo Daviess County.

Int

6 State now if you were present on the trial of
said suit in the Circuit Court of Jo Daviess County
and if so whether or not the said Anson

Rising was sworn examined and gave his testimony as a witness on the trial of said suit

Ans I was present at the trial of said suit and heard Anson Rising sworn and heard him testify as a witness.

Q. State if any time previous to the first day of January 1858 in your presence you had heard the defendant in the title of this deposition named make any statement or statements to you or any other person or persons in regard to the plaintiff in the title of this deposition named, having sworn false or committed perjury and if you answer yes state when and where and fully and particularly what such statement or statements was

(Objected to by defts. Counsel)

Answer. Thomas Hicks came into the store of Whitmore & Gafford in Warren Co. Davess County Illinois Nov 27th 1857 and commenced conversation with a gentleman that was in the store at the time and said that Mr Rising had been into Galena and sworn false and that he could prove it by Porter Cobb and so.

Cross examination.

X Q. 1st Did you ever hear more than one conversation between the defendant and the other persons in regard to the matter of Mr Rising's testimony on the trial of which you have spoken in your direct examination

Answer I never did that I can swear to at any positive time.

I have heard other conversations, but cannot swear to the time that I heard them

Int 2^d Who was present at the conversation that you have sworn to in your direct examination and what time of the day did it take place

Ans A Hyde was present, between 9 and 10 o'clock in the morning

Int 3^d Do you pretend to give more than one conversation in your direct testimony

Ans. I do not

Int 4th Do you give the exact language of Thomas Hicks and all that he said in the conversation you have stated or merely the substance of what you understood him to say

Ans. I gave the exact language as far as I have sworn to as near as I can collect. Could not swear that I heard all the conversation

Int 5th Have you stated all that you did hear of said conversation?

Ans. All that I heard that I remember in reference to his swearing false

Int 6th How do you undertake to state the precise words used by the defendant in said conversation

Ans. Because I was a witness for the corporation in

said suit, because I knew that Mr Hicks was against the corporation.

Int. 7th Did you make any memorandum in writing of the language you have sworn to at the time of said conversation or at any other time?

Ans. I made no memorandum at the time but did after the time as near as I could recollect the words

Int. 8th When did you make this memorandum?

Ans. About the 1st of December 1857.

Int. 9th How did you come to make this memorandum?
(Objected to by plaintiff's Atty.)

Ans. Because I was requested to by Anson Rising

Int. 10th Did you have any conversation with Anson Rising in regard to this matter about which you have sworn, if so what was it.

Ans. I did have conversation with him, the substance of it was that Rising asked me if Hicks was in the store and said anything about him and then wanted to know what he did say and I told him just what I have sworn to.

Int. 11th Did you ever hear the plaintiff Rising say that he would give any money to any person who would swear to what Mr Hicks the Defendant might have said about him or anything to that effect?

(Objected to by plaintiff's Counsel)

Ans. I do not remember that I ever heard him say

that he would give any money

Ind 12th State what you did hear him say

(Objected to by plff's Counsel)

Ans. I conversed with Mr. Rising on several occasions and heard him say if he could prove so and so that he could make Mr. Hicks smart he said he would give something if he could prove so and so

I A. 13th Do you know whether the testimony of the plaintiff Rising on the trial of which you have spoken on your direct examination was true or false?

(Objected to by plff's Counsel)

Ans. Does not know whether it was true or false.

Ind 14th With whom did the conversation you have undertaken to give in your direct examination take place

Ans. It was directed to Hyde.

Re-examined by plaintiff.

Ind 15th State if in your answer to the 12th Cross interrogation propounded to you, you mean to be understood to say that Rising made any offer of money or property to you or any other person to testify to any particular fact suggested by him.

Ans. I never heard him say that he would give any property or money of any kind to any person.
Chas. Whitmore.

State of Illinois }
of Daviess County }

James Payne sworn deposes and says as follows viz;

Interrogatory 1st State your name, age, occupation and residence

Answer Name James Payne age 24 years, occupation mason
residence Warren Co Davis County Illinois,

Int 2^d Do you know the parties plaintiff and defendant
in the Caption of these depositions named or
either and which of them and how long have you
known them or either and which of them,

Ans Knows both plaintiff and defendant, has
known the defendant ten or eleven years, has
known the plaintiff three or four years.

Int. 3^d State if you were present on or about the 27th of Novem-
ber 1837 with Thomas Hicks defendant in the
caption of these depositions named and had any
conversation with him or heard him have any
conversation with other persons in regard to
Anson Rising the plaintiff in the caption of these
depositions named and if so state when, where
and fully and particularly what the defendant
said in said conversation or conversations,

(Objected To by Deft's Counsel)

Ans. I was present with Thomas Hicks and many
others on the 27th of November 1837, in front of
Mr. Doblers Brick Store in Warren Co Davis County
Illinois. I heard some men talking about this
suit between the Trustees of the town of Warren and
J D Platt. Mr Hicks came up during this
conversation and said that An Rising had
sworn false and we could prove it. He said that was
not all An Rising had perjured himself no less than
three times in this place (meaning the town of Warren.)

4th State what the defendant referred to in his conversation when he said that Mr. Kising had sworn false.

(Objected to by defts Counsel)

Ans.

He referred to Mr. Kising's testimony in the suit between the Trustees of the Town of Warren and John D. Platt.

Int.

5th State if at any time previous to the first day of January 1858 you have heard the defendant in your presence make any statement in regard to the plaintiff's having sworn false or committed perjury and if you answer yes state when, where, and fully and particularly what such statement was.

(Objected to by defts Counsel)

Ans.

I have heard him make the statement given in my answer to the third interrogatory propounded.

Cross examined

Int.

1st How do you fix the time of this conversation you have attempted to give?

Ans.

Have not fixed any particular time it was right away after this suit above spoken of.

Int.

2nd Who else was present?

Ans.

Mr. A. Hyde was a good many present, could not mention all their names, Mr. Dobler, Mr. Francis do not think of any more now.

Int.

3rd Do you give the exact language of Mr. Hicks or merely the substance of it.

Ans. Merely the substance of it.

Int. 4th [How do you know what Mr. Hicks meant when you say in answer to the third direct interrogatory meaning the town of Waver

Ans. [We were in this place the town of Waver and he said this place.

Re-examined.

Int 1st Do you pretend to give the exact language of Mr. Hicks as stated in your third direct interrogatory as far as you give the conversation heard by you on that occasion

(Objected to by deft)

Ans. I do not pretend to give the exact language

Int 2 State the time when the conversation mentioned in your answer to the third interrogatory took place as near as you can and how you fix the time if you have any means of fixing it.

Ans. About November 27, 1857 could not say exactly I know nothing to fix the date by but that suit. It was after the suit. I think it was the next day after.

James Payne.

State of Illinois
Jas Davis County

William Cain being first duly sworn deposes and says as follows ver;

Interrogatory 1st State your name age, occupation and residence

Ans.

Name William Cain. Age 44 years. Not engaged in any business at present, Residence Kane's Co. Daviess County Illinois

2^d Do you know the parties Plaintiff and Defendant in the captions of these depositions named or either and which of them and how long have you known them or either and which of them,

Ans.

I know both Plaintiff and Defendant and have known the Plaintiff some three or four years and have known the defendant ten or ^{twelve} ~~eleven~~ years

3 State if you were present with the Defendant on or about the 27th day of November 1857 and heard him have any conversation with you or any other person in regard to the Plaintiff and the testimony given by him on the trial of a suit between the President and trustees of the Town of Warren and John D. Platt, and if so state when and where such conversation was and state fully and particularly what the defendant said in such conversation
(Objected to by deff)

Ans.

It was not many days after the suit named in the interrogatory in front of Mr. Dobler's store I heard some conversation, when I came up Mr. Hicks and A. Hyde and Joseph Dobler were the three men that appeared to be engaged in conversation concerning the result of this suit decided in Galena. Some one made the remark that the suit was decided in Galena against Platt on the strength of Mr. Kising's evidence, Mr. Hicks said that from the account of Joseph and Mr. Platt.

that Mr Kising had injured himself. I think he said he had no better than injured himself when he got his wife from what Mr. Tidwell told him. He said Mr. Tidwell told him that Mr Kising said he was worth so many dollars (do not recollect the number) and that he had not that many cents.

Int. 4th Have you stated all that the Defendant said in that conversation.

Ans. I have stated all that I can recollect. There was other conversation that I cannot recollect.

Int. 5th Now state if the persons you have named were engaged in conversations when you came up and also if they were still in conversation when you left.

Ans. They was both when I went up and when I left.

Int 6 State if you have heard any other conversations or statements by the defendant in regard to the Plaintiff or in regard to the testimony given by him on the trial above referred to and if so state when and where and fully and particularly what the defendant said.

Ans. I have heard other conversations but cannot give them

Cross examined:

Int 1st Do you pretend to give the exact language of the conversation of Mr Hicks or merely the substance and tenor of the same.

Ans. I have given it as near as I can recollect

(Objected to)

2 Do you swear that you have given the identical words spoken by the defendant or other similar or equivalent words

(Objected - By Plff)

Ans. I have given as near as I can recollect.

Int 3. Do you swear positively that the words given by you in your direct examination as the words of the defendant were the very identical words spoken by him on the occasion you have spoken of?

Ans. I think that Mr Hicks used those words just as I have given them in

Int 4th Did not Mr Hicks say that if what Joseph and Mr Platt said about Rising's testimony was true that Rising had perjured himself or words to that effect

Ans He said from the conversation that he had with Joseph and Mr Platt that Mr Rising had perjured himself.

Int 5 Did the defendant state what you have sworn to more than once on that occasion,

Ans I did not hear him

Int 6 Where was Mr Hicks during this time

Ans In front of Dobbs's store.

Int 7 Have you had any conversation with the Plaintiff

in regard to this suit

Ans. I have had some.

Int 8th Did not the Plaintiff threaten to institute a similar suit against you?
(Objected to by Plff)

Ans. I believe he did.

Int 9. Did he or did he not agree with you that if you would testify in this suit against Hicks that he would not prosecute you
(Objected to)

Ans. He never spoke to me in that way.

Int. 10 How did he speak and what did he say

Ans. He said he had learned from good authority that Mr Hicks and myself and Mr Platt had been saying things to injure his character and he thought that he could sustain a suit against us but he did not think that either Platt or myself intended any injury against him. he said his main object was to vindicate his character and he thought the course that Mr Hicks had taken was to injure him all he could

Int. 11. Did the Plaintiff never either directly or indirectly intimate to you that if you would testify what you knew in this suit against Hicks that he would not sue you?
(Objected to)

Ans. He said I do not want to injure any one but he should vindicate his character to the

2 Do you swear that you have given the idea that

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last or to that effect. He did not think that Mr Platt nor myself had done anything with the intention of injuring him but thought Mr Hicks had.

Reexamined.

Int 1st Did the Plaintiff ever say to you or in your presence that he should institute a suit against you?

Ans. I do not remember that he did just in those words

Int 2^d Did ^{he} the Plaintiff in any form of words say that he would institute a suit against you and if so what did he say upon that occasion?

Ans. He said he thought he could sustain a suit against all three of us Hicks, Platt and myself.

Int 3 Is that all the threat he the Plaintiff ever made in your presence and hearing about commencing suit against you?

Ans. He said from what he had heard that Platt and me should have said he thought at one time that he should put us all through but he was satisfied that we Platt and myself did not want to injure him and that he should not now prosecute us

Int 4th Was this conversation the only conversation you had with the Plaintiff in which ^{the} the Plaintiff threatened or intimated that he intended to prosecute you?

Answer This is the only one that I recollect.
W^m Cairn.

Deft. before said depositions were read to
the jury moved to suppress the following interrogations
because the same were leading. To wit;

The 3^d & 7th to Whitmore, The 3^d & 15th
to Payne. And the 3^d to Cain which motion
was overruled by the Court to which ruling
of the Court Defendant then and
there excepted

F. A. Fisdell was then sworn and
testified that he had known defen-
dant 12 or 13 years and Plaintiff 3 or 4
years - He married daughter of
witnesses. Knows something of defen-
dant's pecuniary circumstances
but not particularly. Pick lives some
2 miles from witness. Claims to
own a great deal of real estate
which is worth from \$ 15,000 to
25,000. Don't know how much
he is worth. Witness don't know
of his own knowledge that defen-

don't own any of this real estate.
Has a large stock of cattle around
him all the time & has known
of Hicks buying and selling a good
many farms, but don't know
that title is in him. Don't
know that Hicks is worth
anything except from appear-
ances

John D Platt was
then sworn and testified that
Hicks lives about a mile from
witness and he knows by reputation
his pecuniary circumstances. He is
in possession of property. Don't
know ~~how much~~ the number of
acres lives on a valuable
farm. Don't know how much he is

worth - has traded a great deal in stock - deals
in cattle and lumber. There is a store in Warren
carried on by Hicks and Brothers, sons of deft.
Has the reputation of being a man of wealth.

Plaintiff here closed their testimony.

Defendant then called Matthew Marmon
who was sworn and testified that he knew the
parties and is an attorney at law & was present
at the trial of the case of the President & Trustees
of the Town of Warren against John B Platt in the
3d Daviess County Circuit Court & was one of the
counsel for the deft. Platt & took down the
testimony & incorporated same into a Bill of excep-
tions. Rising was a witness on said trial and
was introduced & sworn for the deft. Platt. Deft.
then offered to prove the pendency of ^{said} suit &
the issues in said suit. Plaintiff objected, which
objection was overruled by the Court and the plain-
tiff excepted to such ruling.

Rising testified that he resided on
town plat; that he left home on the day of the
election of Trustees of said town of Warren for the
polls about 4 o'clock in the afternoon - lived 40
or 50 rods from them - that he remained at
the polls about one hour. That he looked at his
clock when he started & thought his clock was
right. That after he had been at the polls one
hour, the judges of the election discussed the
time of closing - watches were compared. Deft.
watch with others, five minutes allowed for a
difference of watches & the polls closed at 5 o'clock.
He was cross examined and said several
times it was 5 o'clock when the polls closed.

He concluded his testimony by saying it was 5 minutes from 4 o'clock P.M. when the polls closed - Platt was seeking to show in his defence on said trial that the polls were closed at 4 o'clock & that voters were not permitted to vote in consequence and thus to show that the Trustees were not legally chosen.

This question was asked witness by depts. what was your object in endeavouring to prove the polls closed at 4 o'clock? objected to by plaintiff objection overruled by the Court, to which ruling the plff. excepted & witness answered, he was seeking to prove the illegality of the election of Trustees.

John D. Platt, was then sworn and testified that he knew parties - that he is in the exchange business - is judge of the 1st Davies County Court - was the defendant in the suit of President & Trustees of Warren spoken of by the witnesses - was present at the trial - Rising was present was sworn & gave his testimony - witness paid attention to his testimony, plaintiff objected to witness stating the testimony of Rising, which objection was overruled by the Court to which ruling the plaintiff excepted, he was called by witness and attorneys to prove whether witness resided in the town of Warren in the first place & afterwards in relation to the election of Trustees, he stated that he left home about 4 o'clock by his clock & went to the polls, 50 or 60 rods from his house - that he remained there about one hour & the time came for closing the polls, watches were compared, mine with others, five minutes were allowed for difference of watches and the polls

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were closed - Rising was positive in regard to time said that he was pressed to define the time he would say 5 o'clock, I was one of the judges of the election & examined time of closing polls, they closed a few minutes after 4 o'clock, Mr Dobler was there - have no recollection of seeing Rising there - am positive about time polls closed, I went to Rising immediately upon his leaving the witness stand & told him he was mistaken in regard to closing the polls & that he had better correct his testimony then, He said if we wanted to impeach his testimony we could have the privilege and did not correct it.

On cross examination witness (Platt) further testified that two other witnesses testified on the trial as to closing polls - one of them testified differently from Rising; The other swore positively that it was 4 o'clock when polls closed, The notice for the election was between the hours of 8 & 5. The clerk said the hour for closing was 4, & we closed at about 4 o'clock, I found on counting the votes that I was mistaken as to the notice one hour - Rising underwent a thorough cross examination, In his direct examination he said according to his belief it was about 6 o'clock when the point was passed he said it was 5 o'clock.

Deft's counsel asked witness this question: "What was the common talk in Wauken at that time as to Rising's testimony?" objected to by plaintiff & objection sustained by the court, to which calling the defendant then excepted.

Joseph F. Dobler was then sworn & testified that he knows the parties - & heard the testimony

of Payne & Cairn read in this case - remembers
 the occasion spoken of by them, when conversa-
 tion took place in regard to Jeff - before my store
 in Warren - it was about 7 o'clock in the morning -
 when the conversation began there were but few
 persons present, it had been going on from 15 to
 20 minutes before Mr Hicks came up - Hicks
 came up on horseback - think he was on the
 opposite side of the street & that some one
 called him over and he rode over - There was
 then a large number of persons present, they
 were conversing about the trial in Galena between
 the Trustees & Platt & were all talking about what
 Kising swore to on the trial. Hyde advocated
 Kising - the rest were down on him - some
 allowed he ought to be put through for his testimo-
 ny. Hyde thought they were all mistaken because
 he said Kising would not go to Galena and
 swear to a lie - he could not see what object he
 could have in swearing false, some one said
 Kising was anxious to have the case go as it did
 because he was related to the parties, some one
 then asked Mr Hicks what he thought about it,
 Mr Hicks spoke as about like this, that he would
 not think that Kising would go to Galena and
 prepare himself as he had just recently got out
 of a bad scrape, or had had such a narrow
 escape, Hicks further said his son Jo had sworn
 as to the closing of the polls and he would soon-
 er believe him than half a dozen Kising's.
 Hicks only stopped a minute or two and then
 rode away - this was the next morning after the
 trial in Galena. Volney knows this because
 the successful party had the night before

fired cannon and broken a boys leg. & witnesses commenced the conversation and heard the whole of it from the beginning to the end. Hicks did not come back to the crowd but rode off - am pretty positive about that. Hyde was the foreman at work for witness. Thinks he worked that day - I was there at work all day with my men - were finishing that Brick store, was present at the closing of the polls of election of Trustees - Hicks said something in the conversation about Deacon Harvey of Chicago putting Rising through on a charge for getting things said Harvey had the papers to put him through. This was what Hicks referred to when he said Rising had had a narrow escape -

Witness don't remember that Payne was present, is pretty sure that Payne was there. During this conversation of Hicks, on cross examination witness testified he was very positive he heard all the conversation that took place he felt interested in the trial at Galena. Relations to Hicks are friendly have nothing particularly against Rising. Rising resides in corporation of Warren Hicks does not - about 2 miles off - I was a merchant and in the controversy - Hyde said in the above conversation that if he (Hyde) was Rising, he would make them smart, never heard Hicks say a word against Rising until that morning - have heard some conversation in regard to other matters.

Defendant then introduced the record of the trial of the President & Trustees of the town of Warren & John D. Platt - as evidence.

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(Said Record is not to be found in the files of the cause)

John K. Booth sworn testified that he knew ~~the~~ Rising when this suit was commenced and say his character was bad then - had his friends and his enemies

Plaintiffs Counsel moved the Court to exclude the Record from the jury. The Court ruled that he would not exclude the Record, but admitted the Bill of exceptions not as testimony in this case, but to show what the issues were in the 40 Daviess Circuit Court.

Mr. Dotler was then recalled by the defendant & testified that he was present on the election of Justices of the Town of Warren. Did not see the plaintiff there.

Plaintiffs Counsel here objected to the witness giving any evidence as to what took place as to the closing of the polls at said election. Defendant offered to prove by this witness the time of closing said polls and that the plaintiffs testimony in regard to the closing of the polls was false. But plaintiffs Counsel objected and the objection was sustained by the Court. To which ruling of the Court defendants Counsel then and there excepted

Plaintiffs Counsel then moved

The Court to exclude the testimony of Marion H. Platt from the jury which motion was sustained by the Court, to which ruling of the Court in sustaining said motion the defendant by his Counsel then and there excepted.

The Court then instructed the jury as follows.

Anson Rising }
as } Plff. asks the following
Thomas Hicks } Instructions.

1st The Plaintiff is entitled to recover need
Given not prove all the identical words charged in the declaration, but proof of the substance of the identical slanderous words is sufficient

2nd The words charged in this case are actionable of
Given themselves made as by Statute and if the jury believe from the evidence that the plaintiff has proved them as laid in his declaration then they must find for the plaintiff unless the evidence fully sustains the defendant's plea of justification.

3rd That to sustain a plea of justification alleging that the plaintiff committed the crime of perjury, the same strictness of proof is required as
14th Ills. 48-9 would be necessary to convict in a criminal
Darling vs Bank prosecution, for such crime and the defendant must not only show that the plaintiff swore false but that he did so willfully corruptly and knowingly, and if the evidence shows that the defendant has failed to do so in this case then they must find for the plaintiff if they
Given.

gurther believe from the evidence that the defendant spoke the slanderous words charged.

15th Ms. R. 4 That it is a question for the jury to determine whether the pleas of justification were interposed by the defendant in good faith and with a bona fide expectation of proving the same or not and if the jury believe from the evidence that such pleas were interposed in this cause frivolously and without any reasonable expectation of sustaining such pleas then the jury may consider such pleas a continuation of and aggravation to the slander and consider it in estimating the damages

5th Where the words spoken are made actionable by statute or are so of themselves it is not necessary to prove ~~the~~ special damages in order to entitle the plaintiff to recover.

6th In estimating the damages in an action of slander the jury may take into consideration the pecuniary circumstances of the defendant, and where the charge is proved to have been willfully and maliciously made the damages are not merely to compensate the plaintiff but also to punish the defendant.

Def^ts Instructions

1st In slander the plea of justification not sustained should not necessarily enhance the damages - If the defendant pleads a justification in the honest belief that he will be able to sustain it on the trial, he ought not to be punished for so doing, though he fail

To establish it to the satisfaction of the jury. And if the jury believe from the evidence in this case that the defendant filed his pleas of justification in good faith, expecting to sustain them by proof then the jury should not consider those pleas in aggravation of damages, even though even though he may have failed to prove the pleas.

Given
 2^d If the jury believe from the evidence that the conversation referred to in the testimony of Payne Carr & Dopler as having taken place in front of Dopler's Store was one and the same conversation then the whole of the conversation of the defendant in regard to the plaintiff should be taken into consideration by the jury, and if the jury further believe from the evidence that the deft. at the same time & place in the same conversation so qualified his statements as not to charge the plaintiff with false swearing or perjury & did not then & there convey to the minds of the hearers the idea or impression of such charge, then as to that conversation the defendant is not guilty.

And the jury returned the following verdict.

We the jurors find the issues for the plaintiff and assess the damages at one thousand dollars.

H E Williams
 A L Osborn
 W A Killion
 O O Barker

William Golden
 William & Cottrell
 John A. Hunt
 Elsie Pratt
 Silvestre Brucitor
 C. W. White
 William Garrison
 Bonney Goldridge

Defendant thereupon moved the Court for a new trial and filed the following reasons therefor

Amos Rising	{	Ancient Court of Lee County of the May Term A.D. 1859. Case for slander - Change of venue from Jo Daviess and Stephenson Counties
as Thomas Hicks		

Now at this day comes the said defendant and moves the Court for a new trial in the above entitled cause for the following reasons,

1. Because the verdict is contrary to the evidence
2. Because the verdict is against the weight of evidence
3. Because the verdict is contrary to law and the evidence
4. Because the Court gave improper instructions for the plaintiff
5. Because the Court improperly excluded the evidence of the defendant
6. Because the admitted in-

proper evidence for the plaintiff

7. Because the damages are excessive

And for other good and sufficient reasons appearing in the face of the papers
McClellan & Wigley & Small
Attys for Defth.

Which motion was overruled by the Court
To which ruling of the Court defendant then
and then excepted, and prayed an appeal
to the supreme Court

The above is all the testimony
introduced on the trial of the above entitled
cause as

And defendant brings his Bill of
exceptions and prays that the same may
be signed and sealed and made a part
of the record here in, which is accordingly
done this 14th day of May A.D. 1859,
John O. Eustace Seal
Judge 22^d "

entered

"Filed May 14th 1859

J. H. Boardman Clerk."

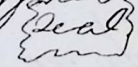
And on the 22^d day of June A.D. 1859 the
said Defendant filed his appeal Bond which
is in the words and figures following to wit:

84

11

Know all men by these presents that the Thomas Hicks, William Hicks and Joseph Hicks are held and firmly bound unto Anson Rising in the several sum of twenty five hundred dollars for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators jointly by these presents, witness our hands and seals this 13th day of June A.D. 1859.

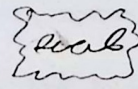
The condition of the above obligation is such that whereas the said Anson Rising did recover the a judgement against the said Thomas Hicks at the May term A.D. 1859, of the Lee County Circuit Court, in the State of Illinois for the sum of one thousand dollars and costs from which judgement said Thomas Hicks has taken an appeal to the Supreme Court of this State, now if the said Thomas Hicks shall pay the said judgement cost interest and damages, in case said judgement shall be affirmed; and shall duly prosecute his said appeal then this obligation to cease and be void other wise to remain in full force and effect.

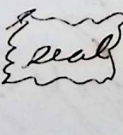
Thomas Hicks 

Approved June 22. 1859

J. S. Boardman

Clerk

William S. Hicks 

Joseph Hicks 

11

Endorsed

" Filed June 22 1859

J. S. Boardman Clerk "

And the following is the Record in said Cause in said Lee County; that is to say

Be it remembered, that at a Regular Term
of the Lee County Circuit Court begun and holden
at the Court House in Dixon in said Lee County,
on the first Monday of May, in the year of
our Lord, one Thousand Eight Hundred and
fifty nine

Present Hon: John V. Custace Judge
of the 22nd Judicial Circuit of Illinois

Robert C. Smockell States Attorney
for said Judicial Circuit

Isaac L. Bonnatman Clerk
of said Lee County Circuit Court

Dexter Hongling Sheriff
of said Lee County -

On one of the regular days of said May
Term to wit on Friday May 6th A.D. 1859 the
following entries appear to us of record in this
behalf: that is to say: -

" Anderson Rising } Change of Venue from Stephenson County,

Thomas Hicks } Trespass on the case.

On this
day comes the Plaintiff by Sweet & Champion
his Attorneys; and the Defendant by McClellan,
Wigley, Richmond & Edsall his attorneys;
and the Defendant now enters his motion to
dismiss on the ground of insufficiency in
the Transcript from the County of Stephenson.
and thereupon said Plaintiff enters his
cross motion for leave to file amended Transcript
which said cross motion is sustained, to

which the said Defendant by his attorneys then & there excepts: and now the said Defendant moves for a rule on the Plaintiff to file security for costs, which said last motion is overruled.

And now comes the Plaintiff and files an amended Transcript of the proceedings in this cause in the County of Stephenson County Circuit Court, and thereupon the said Defendant enters his motion for a continuance, which said motion is overruled, and to which, ruling the said Defendant by his counsel then & there excepts.

And now comes the said Defendant and enters his motion to suppress the Depositions on file in this cause, which said motion is overruled, and to which, ruling the said Defendant by his counsel then and there excepts: and the issues being joined now, come a jury of good and lawful men to wit: Wesley A. Kellison, Sylvester Bristow, Hannay & Williams, William Garrison, Chas. Pratt Semerey, Frowbridge, George Osborne, C. W. White, John Hunt, W. S. Catlett, William Holcomb and Oliver C. Barker, who were duly elected tried and sworn, well and truly to try the issues here, and the hour of adjournment, having arrived, the said jury being charged by the Court, are directed to meet the Court tomorrow morning at half past eight o'clock.

And afterwards at a regular day of said

May Term, to wit on the 7th day of May aforesaid
the following is the Record entry in this behalf
that is to say

" Answer Rising }
Thomas Hicks } Trespas on the case

On this day again come
the said parties by their respective attorneys,
also come the jury heretofore impannelled in
this behalf, and the said Jury having heard the
evidence, and the argument of Counsel
retire to consider of their verdict: and
afterwards on this day come the said Jury
and now return the following Verdict to wit:-

" We the Jurors find the issues for the Plaintiff
and assess the Damages at One Thousand
Dollars - whereupon comes the Defendant
and enters his motion for a new trial "

And afterwards at another regular day
of said May Term, to wit on the 14th day of
May aforesaid the following record entries
appear to us in this behalf; that is to say -

" Answer Rising }
Thomas Hicks } Trespas on the Case

On this day come the
said parties by their respective Counsel
and the motion for a new trial herein
before made, is now overruled, to which
ruling the said Defendant by his Counsel
then and there excepts: It is now con-
sidered and adjudged by the Court that

the Plaintiff have and recover of the Defendant the sum of One Thousand Dollars his Damages by him in this behalf sustained, together with his costs and charges in this behalf expended and that he have Execution therefor

And now comes the said Defendant and prays an Appeal, which is awarded on condition that he execute a Bond within forty days from the date hereof in the sum of Two Thousand Dollars, Five Hundred Dollars, with William Hicks and Joseph Hicks as security thereon.

And on the further motion of said Defendant leave is given him to have his Bill of Exceptions signed in thirty days from the date hereof

Bill of Costs in said Cause
Anson Rising } Sup Lee County
Thomasa Hicks } Sheriff's Cost

For case	10	ap + att	25	\$	0
2 Spas & M 80 - filing 9 pps	15	4 affid	40	1	85
Ord open Depositions	20	open + filing dep	10		50
mo for venue to amend transcript	20	Ord for same	20		40
Ord over mo to file sec for cost	20	Ord call jury	20		40
Ord over mo to suppress	20	Ord adjournate	20		50
Ord over mo for new trial	20	Ent Judgt	25		75
Ord for cost	20	Ord for Ex	20		60
Ord as to appeal Bond	20	Transcript			85
Bill of Cost	30	Copy	20		
Sheriff's Fees (Census)		Subp	6.72	9	72
Witnesses		James Daine, J A Trisdale, A J Barnes			
		each 3 Days 120 miles @ 19.00 =	27.00	27	00
Deposition Fees		Shawp	7.45		
		Sheriff	70		
Const Bennett	70	Witnesses, Jorner & Coim	50		
				9	85
					52.77

For Bills of Cost in J. Davies & Stephenson v. State Record ante.
Lee County } Defendants cost in the above cause

ap + att	25	J affidants	70	filing 5 pps	25	mo to Dismiss	20	\$	0
Ent 1 st Except	20	mo for sec for cost	20	mo for Cost	20			1	40
Ent 2 nd Except	20	mo to suppress	20	Ent 3 rd Exception	20				60
mo for new trial	20	Ent 4 th Except	20	Ord Bill of Except	20				60
mo for appeal	20	Ord for same	20	6 cents	30	2 Spas	70	1	40
Bill of Cost	30	Copy	20	Docket Fee	7.25			1	75
Witnesses fees		J R. Booth	2 Days 120 miles					8	00
		W. Dobler, N. W. Moyer, M. Mowin, J. Platt, C. G. Hunt							
		each 3 Days & 120 miles						45	00

State of Illinois }
Lee County }
This Transcript, Cost & Seal etc \$30.00 (3.1)
I certify the foregoing to be a correct
copy of Costs in said Cause from J. R. Booth
James L. Donaldson Clerk
W. J. Ball D. C.

State of Missouri }
 Ser County }

I, Isaac L. Boardman Clerk
 of the Circuit Court within & for the County
 of Ser in the State aforesaid, do hereby certify
 that the foregoing, is a full true and
 complete exemplification of all the
 proceedings of record, and of all the files
 in the matter of Anson Rising, against
 Thomas Hicks lately tried in our said Court
 In testimony whereof I hereunto
 set my hand and the seal of said
 Court this 29th day of March.

A D 1869

I. L. Boardman Clerk
 for Joseph Ball D.C.



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Supreme Court of the State of Illinois
Third Grand division April 1860

Thomas Hicks } Appeal from Lee &
Anson Rising }

And now comes the ~~plaintiff~~ Appellant by
Leland & Lee and his attys & says that in
the record & proceedings in this case there
is manifest error in this viz

1st The Court erred in excluding ^{the} evidence
of the witnesses Martin & Platt, ^{Dobson} from the
jury.

2^d The Court erred in excluding evidence
offered by the defendants below, from the jury

3^d The verdict & judgment were against
the law & evidence

4th The judgment was improperly rendered
for the plaintiffs below instead of for the
defendants

5th The Court erred in allowing the two
of defendants below for a continuance & in not
dismissing the deposition of ^{witnesses of} plaintiffs below
If the Court please a reversal of the judgment
Leland & Lee
for Appellants

Thomas Wick

↙
Anson Rising

Appeal from Lee County

And now comes the appellee and
says that in the record & proceed-
-ing aforesaid and in the rendition
of the Judgment aforesaid there is
no error. & ~~there~~ he prays that said
Judgment be in all things affirmed
Glenn Cook & Company

242 - 172

Transcript

in re

Amos Rising

vs

Thomas Hicks

Wicks is appellant in Superior

Filed April 18, 1860

L. Leland

Clerk

\$10.00 P.D.

Fees \$30 paid by Deft.

242 - 172

Transcript

in re

Amos Rising

vs

Thomas Hicks

Wicks is appellant in Superior

Filed April 18, 1860

L. Leland

Clerk

\$10.00 P.D.

Fees \$30 paid by Deft.