

No. **12319**

Supreme Court of Illinois

Slater

vs.

Rink & Wife

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1857 May 6. 1857

12319

1857

George W. Smith

George W. Smith

1857

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Plea held at the Court-house in Geneva, within
and for the County of Kane, in the Thirtieth Judicial
Circuit of the State of Illinois, before the Honorable
Isaac G. Wilson, presiding judge of said judicial circuit
and of the Circuit Court of the said County of Kane, of the
November Term of said Court, A.D. 1856.

Caspar Kink &
Elizabeth Kink
his wife
vs
George R. Slater

Trespass for Assault and Battery.

Be it remembered that the said plaintiffs,
by B. F. Parks their Attorney, filed a declaration in the
office of the Clerk of said Circuit Court in the above
entitled cause which was in the words and figures
fallowing, to wit;

State of Illinois

Kane County and the Circuit Court thereof for the
May Term A.D. 1856.

Kane County ss. Caspar Kink and Elizabeth Kink
his wife by B. F. Parks their Attorney complains, of
George R. Slater defendant herein of a plea of trespass

For that the said defendant on the to wit 6th day of
May A.D. 1856 with force and arms assaulted the said
Elizabeth Kink then and there and still being the
wife of the said Caspar Kink, to wit, at Aurora
in said County and then and there with a hoe
beat bruised wounded and ill treated her so that

her life was greatly dispaired of and knocked her down to and upon the ground and then and there cut bruised and wounded the person of the said Elizabeth Prink by means whereof the said Elizabeth Prink suffered great pain and her life was greatly dispaired of and other wrongs to the said Elizabeth Prink then and there did against the peace and dignity of the people of the state of Illinois and to the damage of the said Caspar Prink and Elizabeth his wife of four thousand dollars and therefore they bring suit.

B. F. Parker

To which declaration the said defendant, by Parker and Eastman his attorneys, filed the following pleas, to wit,

George K. Slater }

Ads }

Caspar Prink & }

Elizabeth Prink }

In the Circuit Court of the County
of Kane, of the May term thereof
A.D. 1856

And the said defendant, by Parker and Eastman his attorneys, comes and defends the force and injury, when &c. and says, that he is not guilty of the said supposed trespasses laid to his charge, or any or either of them, or any part thereof, in manner and form as the said plaintiffs have above thereof complained against him, and of this he the said defendant puts himself upon the country.

And for a further plea in this behalf, as to the said assaulting, bruising, wounding, and ill treating the said plaintiff Elizabeth Rink, and as to the said knocking her the said Elizabeth Rink down to and upon the ground, and then and there cutting, bruising and wounding the person of the said Elizabeth, in the said declaration mentioned, the said defendant saith, that the said plaintiff's ought not to have or maintain their aforesaid action thereof against him, because he says that the said plaintiff, Elizabeth Rink, just before the said time when &c. in the said declaration mentioned, to wit, on the day and year in the said declaration mentioned, at the County of Kane aforesaid, with force and arms, &c. made an assault upon the said defendant, and then and there violently attacked the said defendant, and with her hands attempted and endeavored to strike and injure the said defendant, and would then and there have beaten and ill treated the said defendant, if he had not immediately defended himself against the said Elizabeth Rink; whereupon the the said defendant did, then and there, defend himself against the said Elizabeth Rink, as he lawfully might for the causes aforesaid, and in so doing did necessarily and unavoidably as little beat bruise, wound and ill-treat the said Elizabeth Rink, and knock her down to and upon the ground, and cut, bruise, and wound the person of the said Elizabeth Rink as in the said declaration mentioned, doing no un-

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necessary injury, or ⁴ damage to the said Elizabeth Trink,
or to the said plaintiffs on the occasion aforesaid, and
so the defendant saith, that if any hurt or damage, then
and then happened to the said Elizabeth Trink, or to the
said plaintiffs, the same was occasioned by the said
assault so made by the said Elizabeth Trink on him
the said defendant, and in the necessary defence of him
the said defendant, against the said Elizabeth Trink,
which are the same supposed trespasses in the introduc-
tory part of the plea mentioned, and whereof the said plain-
tiffs have above complained against him the said defen-
dant, and this the said defendant is ready to verify;
Wherefore he prays judgment of the said plaintiffs
ought to have ~~or~~ maintain their aforesaid action
thereof against him.

Parker & Eastman,
Attys for Defendant;

On the first of which said pleas the said plain-
tiffs joined issue, and to the second made the fol-
lowing replication.

Carpar Trink	{	Hanc Co Cir Court
Elizabeth Trink		
vs		
George K. Slater	{	Nov Term A.D. 1856

And the said plaintiffs by Parks & Day
their attorneys as to the said plea of the said defen-
dant secondly above pleaded, say precludi non
because they say that the said defendant of his own wrong

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committed the said trespasses complained of in the
plaintiffs declaration and without the causes in his
said plea alleged, and thus the said plaintiffs pray
may be enquired of by the Country

Parks & Day
Plff Attys

On which replication the said defendant joined issue,
and at the said November term of the aforesaid Circuit
Court, in the County aforesaid, before the Honorable
Isaac G. Wilson, Judge as aforesaid, the said defend-
ant withdrew his plea of the general issue, and the said
parties to the said suit went to trial on the issue form-
ed on the said second plea, and thereupon proceedings
were had in said trial before said court as set forth in the
following bill of exceptions, to wit,

Carpar Brink & }	Trespass for assault and battery in the Hann County Circuit Court,
Elizabeth Brink }	
vs }	
George R. Slater }	

Be it remembered that on the trial of this cause,
at the November term of said Circuit Court, A.D. 1856, before
a jury of twelve good and lawful men, empannelled and
duly sworn to try said cause, the said plaintiffs, to main-
tain the issues on their part introduced one E. H. Bru-
ner, as a witness in said cause, who testified as follows:
—That on the 5th or 6th day of May, A.D. 1856, he, (the
witness,) was at the house of the plaintiffs about three
o'clock P.M. and looking out at the window, saw
the defendant and the two boys exchanging words, — saw

saw the defendant strike the horses, and saw him strike one of the boys with his fist. — By that time they came towards the house. — The old lady, and a little girl eleven years old ran out, — Witness went out. — The boys were crying. — When the old lady got near the defendant, he, the defendant struck her three ~~or~~ four blows with a hoe, on her back, side, and hand — She fell — Slater struck her after she was down once or twice with a hoe, — Witness came to her, — lifted her up, and led her to the house, and put her on the bed, — I heard the boys crying, — They said that Slater was whipping them, — When I took her in, her hand was swollen as large as an egg, — To my knowledge her life was crippled of about four weeks. — She remained in bed about four weeks — Witness says he is a deacon of the Lutheran denomination, — Dr. Howell and Angell attended her. — Her hand is in a crippled condition. — Elizabeth Pink is the wife of Caspar Pink, and is fifty four years of age, — is a person of small stature, — Witness was at Pinks on a pastoral visit, — Elizabeth Pink was immediately put to bed, and for several days thereafter, complained of pain in the back and hand, and had fever, — One or two of her fingers are stiff, — She has been deprived of the use of her hand since that time. — Pinks and wife belong to my church at Aurora, — Mrs. Pinks, before the assault, was a strong and healthy woman, — had never been sick in her life except when confined, — She had nothing in her hand, and did not strike at Slater. — She has never been sick

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in her life except when she was confined, — Once she was sick. —

On Cross examination the witness says; —
When I saw the blows, I was standing at the road, — I might have been near ten rods from the place where Slater was when he struck the old lady, — cannot say, — it might have been twice the length of this building, but not three times its length, — I saw Slater strike the horses, and saw the mark on the horses head, — I have been to see her frequently since. — To my knowledge she was well at the time, — I recommended Pink to Slater as a tenant, — Slater said he had a notion to take them as tenants, but said he had somewhat changed his mind, because he had heard that the old man was given to drinking, — I said to Slater I had known him three years, and to my mind it is not so. — Dr^g Angell and Howell first treated her, — Afterwards, Dr^g Parker, — I do not know that she had been bitten in the hand by a dog, — I have been told by her husband that she had never been sick in her life, — I never saw her sick, — I did not say to Slater that I would be responsible, so far as the tenancy was concerned, — The old lady seems to be a feeble person now, — One of the boys is fourteen, and the other, eighteen or nineteen years of age. —

The plaintiffs then introduced Charles Wilson as a witness, who testified as follows. —

I live in Wheeland, Will County, — About the first of May last I was going to Coleby's, and heard a noise over in

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the orchard, and saw a woman go up to Slater, — I saw Slater strike her with a stick two or three times, — could not tell what it was, — it might have been a hoe, — She fell down, — He struck her with considerable force, as near as I could tell, — The children were screaming, — He struck her after she was down two or three times, — I did not know Brink at the time, — was plying along on my own business when I saw the assault

On Cross examination the witness says, — I was between Coleby's and Slater houses, — about half way between, — I think the houses are about a quarter of a mile apart, — I was about thirty rods from the parties, I was about ten rods south of Slater's house, — I did not see any man there except Brink's family and defendant, — There were three or four persons there besides Slater, two females, one of them about ten or twelve years old, and two boys between twelve and fifteen years of age.

The plaintiffs then introduced Jacob Brink as a witness in this cause, who testified as follows, —

We went to plow, — Slater came with a hoe and said we must not do so any more, — Slater whipped the horse with the hoe, and whipped my brother with the handle, — My brother took up the corn plow, — My mother came out, — Slater asked her if he should flail her, — I am fifteen years old, — brother is sixteen, — When my mother came out she told us to come into the house, — She talked in German, — Slater whipped mother several times with the hoe on her back and hand, — I am fifteen years

I
old, and am a son of the plaintiffs.

On cross examination, witness said
Mather had nothing in her hand, — She did not strike at
Slater, — She asked us to come to the house, and not place
any more until father came home, — Mather was sick
four or five weeks.

The plaintiffs then introduced Charles Nahar as a wit-
ness in this cause, who testified as follows.

I am a physician, and was called to see Mrs. Rink, four
or five weeks ago, — I found two of her fingers part broken,
and incurable for life, — At that time, with the exception
of her hand, her health was pretty good, — Since that time
she has had the dysentery, and Dr. Angell has attended her.

On cross examination the witness says,

That, — I have been a practicing physician twenty years in
Europe, — I made her three visits, — the last one about three
weeks ago, — The first about three weeks before that.

The plaintiffs then introduced Lorenzo H. Angell as
a witness, who testified as follows.

I am a physician, — I called on Mrs. Rink in May, on Sla-
ter's farm, — I found some bruises on her buttock, — They
were not very extensive, — The back of her hand was black
and blue, — The bone of the fore finger of the left hand was
fractured, — At this time she suffered from a febrile attack, — I
cannot say that it was from the injury, — I cannot determine
how much she suffered from the wound, — Some febrile
excitement might follow, — There was a non uniting of
the bone, — The bone has since united with some stiffness, —

I think she will recover the full use of her hand, — She had fever, with symptoms of bilious derangement, — I cannot say that it was caused by the injury, — I visited her two or three weeks, — The bones were not united, and she came to my office, and I inserted a seaton, and afterwards the bones united, — I prescribed for her hand some time the last of August, — She went to work too soon, and worked on the farm, — She will recover the use of her hand, — She was not dangerously sick, — The skin was not cut, — The injuries were all bruises, — Her fingers are still stiff, —

On Cross examination, the witness said, — The day after the injury there was considerable febrile excitement, — It is my opinion that latent disease existed in the system at the time of the injury, — It is not usual for a broken bone in the hand to produce illness, — She did not take proper care of her hand, — I gave her two scoldings for not taking care of it, — She worked out on the farm.

The plaintiffs then introduced Luke Gates as a witness, who testified as follows.

I think Slater's property is worth about ten thousand dollars, — Knows Slater's circumstances, —

On Cross examination the witness says, — I think the distance from Coleby's house to Slater's house is about half a mile.

The plaintiffs then introduced Asa P. Farnsworth

as a witness, who testified as follows. —

I think Slater's property is worth from nine to twelve thousand dollars, — know Slater's circumstances,

The plaintiffs here rested their case, and the said defendant, George K. Slater, to maintain the issue on his part, introduced as a witness in this cause, one George P. Smith, who testified as follows. —

The first occurrence was, the defendant and myself went to work on the farm, — I went to plowing, and the defendant went to trimming his orchard, — The boys said something, and Slater said to them, go away. — They came on the land where I was plowing, — They had some difficulty, — The boy came down and began tilling about land, when I was plowing the orchard, — Slater told them to go off, — They kept on down to the hedge, — They kept hauling around on the land, — Slater held up his hoe to ward off, — They threatened to kill him, — The old woman and girl came out, — The girl had an apple-tree limb, and came at Slater with it, and the old woman came at his face and eyes, — Slater told her to go away, — She was down, — Then got up and acted as though she was hurt, — The priest came up, — The boys were behind Slater cursing and swearing, and threatening to kill him, — They took up a shovel plow, and swore they would kill him. — This was about thirty or thirty five rods from the road, — I was Slater's hired man at the time, — It is half or three quarters of a mile between Slater's

and Coleby's, — I think it is eighty rods between Slaters and Coleby's. — The old woman was in the field feeding cattle and hogs in a week or ten days after that time.

On cross examination, the witness stated, — That he had no suit against Rink, the plaintiff, — had some commenced but was told they were dismissed, — If I have any suit against Rink, I do not know it, — Went to Slaters service because I had a right to, — I have not got a lease of Slaters farm as soon as Rink leaves it, — I did not try to get up difficulty between Jacob Rink and Slater, — I did not tell Rink that they must not feel hard with me as Slater had given me thirty dollars to swear for him, — I had some cases commenced against Rink for his dog biting my wife's hand, — I do not know any thing about suits of mine in this court against Rink. —

The said defendant, then, for the further maintenance of the issue on his part, introduced a written demise from the said defendant to the said ~~Carp~~ plaintiff, Caspar Rink, of the farm of the said defendant, as evidence to the jury in this cause, which said demise, is in the words and figures following, to wit,

This indenture made this 7th day of September A.D. 1855, between George K. Slater of the County of Kane and State of Illinois party of the first part, and Caspar Rink of the County and State of said Illinois party of the second part, witnesseth that the said par-

ty of the first part doth hereby demise and lease unto the said party of the second part all that messuage, tenement and lot of land lying and being situate in the County of Kane and State ~~of~~ of Illinois known and described as follows being the farm now owned by the party of the first part and now occupied in part by one Kendall upon the following terms and conditions The said party of the second part is to furnish necessary team to do the work on said farm, and keep them at his own expense The party of the first part is to furnish two shovel plows one stirring plow two drags and the use of reaper now on the place also the fanning mill now on the place also one half of all the seed necessary to till and carry on the place and the party of the second part is to furnish the other half of all the seed for the place The party of the second part agrees to deliver to the party of the first part one half of all the small grain in the half bushel or bin one half of the potatoes buried in hole one half of the corn in crib The party of the first part is to put on said farm eight cows which the said party of the second part is to feed and take care of the coming winter out of hay now on the place and replace said hay next fall said party of the second part is to put in two cows and deliver to the party of the first part one half of the butter, cheese and increase of the said ten cows Said party of the first part is to put on said place from forty to sixty sheep which said party of the second part is to take care of and feed out of hay cut on the place and deliver to the said party of the first part two thirds of the wool when sheared and two thirds

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of the increase at the expiration of this lease each party is to furnish one half of the hogs necessary for the place to be fed out of the common stock and each have one half of the pork lard and increase said party of the first part is to have one half of all the poultry and eggs raised or produced on said farm said party of the second part is to have the use of the garden to himself upon condition that it is to be well tilled and weeds kept down also to keep weeds and grass mowed down around the house and in the yard The party of the second part is to cut all the hay needed for feeding teams and all stock on the place and the party of the first part is to cut and have the balance if he wants it The party of the first part reserves the right to keep his young stock on said place The said party of the first part reserves to himself what plow-land there is in the orchard and the field east of the house north of the road The party of the first part is to furnish what wood is needed for the place out of down wood on the place The party of the first part is to pay one half of the thrashers bill for thrashing the grain The party of the second part is to get out the manure on the place the present fall and all that can reasonably be got out in the spring The party of the first part reserves to himself the fruit on the place and the party of the second part further agrees to farm and take care of the above leased premises in a good and farmer-like manner and keep the fences in good repair and deliver up the pos-

seption of the said on the first of December A.D. 1856 together with all tools implements and all property belonging to the party of the first in as good condition as they now are usual wear and tear and accidents excepted In witness whereof the said parties have hereunto set their hands this ~~7th~~ day of Sept 1855 This lease to go into effect Dec 1st 1855

Signed in presence { George K Slater
of { Caspar Rink
Wm R Parker }

The defendant there rested his case. —

The plaintiffs then recalled the witness, Jacob Rink, who further testified as follows, to wit. —

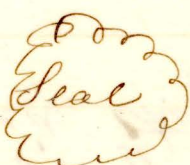
I had a conversation with the witness George S. Smith near the Corn Crib, — Smith told me that Slater was to let him have thirty dollars to be a witness for him.

This was all the evidence that was given to the jury on the trial of this cause.

And ^{either or} no further evidence being offered by either of the said parties, the said George K. Slater by his counsel, moved the said Judge of the said Court, upon the evidence and pleadings of this cause, to instruct the jury that; — "If the jury find for the plaintiffs, yet, they are not entitled to damages excepting for the injury and pain on the day of the injury," — which instruction the said Judge refused to give to the said jury, and to which said refusal of the said Judge to give the said instruction to the said jury, the

said George K. Slater by his counsel then and there
 excepted, and thereupon the said jury gave their
 verdict against the said George K. Slater upon the
 issue aforesaid, and assessed the damages at one thou-
 sand dollars; whereupon the counsel for the said
 George K. Slater moved the said Judge to set aside
 said verdict and to grant a new trial upon the
 issue aforesaid, by reason that the said verdict of
 the said jury given as aforesaid was contrary to
 the evidence given in this case, and by reason also of
 the refusal of the said Judge to give the aforesaid
 instruction to the said jury, and by reason also,
 that the said sum of one thousand dollars so assess-
 ed by the said jury as damages as aforesaid is excess-
 ive and disproportioned to the injury by said plain-
 tiffs alleged to have been committed, and to the cir-
 cumstances and facts as proven on the trial of
 said cause, which said motion the said Judge
 overruled, and gave judgment upon the said
 verdict of the said jury against the said George
 K. Slater for the said sum of one thousand dol-
 lars, as damages to be paid by the said defendant
 to the said plaintiffs as aforesaid, whereupon the
 counsel for the said defendant excepted to the
 decision of the said Judge in overruling the said
 motion, and giving said judgment as aforesaid;
 and inasmuch as the matters aforesaid do not
 appear upon the record of this cause, the counsel
 on the behalf of the said George K. Slater prayed
 the said Judge would sign and seal this bill

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of exceptions containing the said several matters
on the trial of said cause had as aforesaid, and
said exceptions thereunto taken as aforesaid, ac-
cording to the form of the statute in such case
made and provided, and thereupon the
said judge, at the request of the said counsel
for the said George K. Slater, did sign and seal
this bill of exceptions pursuant to the aforesaid
statute in such case made and provided.

Isaac G. Wilson 

The following are the instructions which
were given by the said judge of the said Circuit
Court to the jury, on the part of the plaintiffs,
on the trial of the above suit, to wit,

If the jury believe from the evidence that the
Defendant committed the first assault upon the
Plaintiff, then by the issue the Plaintiff is entitled to
a verdict and the jury should find accordingly.

If the jury believe from the evidence that the Defendant
is guilty then in determining the amount of damages
they are not confined to the actual damages, but
they have a right to take into consideration the
circumstances of the assault - the extent of the same,
the character of the injury received - the amount of pain
& anguish attending the wounds, and also to give exemplary
damages if they believe the assault was wilful.

That the fact that the defendant may be the owner of the land on which the assault is alleged to have been committed is no bar to the Plaintiff's right to recover if the jury believe that the facts proven show the deft guilty of an Assault & Battery.

By the issue the defendant admits the Batteries charged in the Plaintiff's Declaration, but insists they were made and committed in necessary self defence of assaults first offered and made to the defendant by Elizabeth Rink, the Plaintiff.

And unless the jury shall believe from the evidence that the Plaintiff Elizabeth Rink first assaulted the defendant and that all the Beating & wounding proven was committed in his necessary self defence from the assault first offered & made by Elizabeth Rink as aforesaid, they will find for the Plaintiff.

The jury have a right in determining the question of damages if they believe the defendant guilty to take into consideration the pecuniary circumstances of the parties if they believe the assault was willful.

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The following are the instructions given by the Court on the Part of the Defendant.

1. If the jury believe from the evidence that the Plaintiff, Elizabeth Rink, first assaulted the defendant, and that the defendant committed the battery complained of, upon her, in his necessary self-defence, the plaintiff are not entitled to recover.
2. "Any attempt to do a corporeal hurt to another under such circumstances as that the injury might, but for some casualty, have been inflicted, amounts in law to an assault, however slight the proposed injury might be."
3. If the jury ~~believe~~ find a verdict for the Plaintiffs, yet they are not entitled to recover under this declaration damages for loss of time, nor expenses incurred in consequence of the injury.
4. If the jury find a verdict for the plaintiffs, they may take into consideration all the circumstances connected with the transaction, and the provocation if there was any, given to the defendant, in mitigation of damages.
5. If the jury believe from the evidence that the said Elizabeth Rink first assaulted the defendant and that the defendant committed the battery complained

of in the declaration, in self defence against such assault, the battery so committed is justifiable in law under the pleadings, without regard to the amount of the injury.

The undersigned, Attorneys for the respective parties to the above entitled cause, hereby certify and agree that the above is a true transcript of the Record and proceedings had in the Circuit Court for the County of Maine at the November term of said Court, A.D. 1856, and of the Bill of Exceptions on file in the office of the Clerk of the said Circuit Court and of the instructions given by said Court to the jury on said trial: - And we further certify and agree, that the only questions and points of law arising in said cause, and which are hereby submitted to the Supreme Court, for the consideration & decision of the said Supreme Court, are the following to wit:

1st Whether, under the pleadings the said Circuit Court erred in refusing to give, on the part of the defendant, George A. Slater the following instruction to the jury to wit:

"If the jury find for the Plaintiffs, yet, they are not entitled to damages excepting for the injury and pain on the day of the injury.

2^d Whether the verdict of the jury in said cause was contrary to the evidence given on the trial thereof.

3^d Whether the sum of one thousand dollars so assessed by said jury as damages to be paid by said appellant to said appellees, is excessive, and disproportioned to the injury alleged by said appellees to have been committed on said Elizabeth Rink, and to the circumstances and facts as proved on the trial of said cause.

4th Whether the Circuit Court erred in overruling the motion of the said appellant to set aside the said verdict of the said jury, and to grant a new trial on the issue in said cause.

5th Whether the Circuit Court erred in rendering a judgment in favor of the said appellees on the aforesaid verdict in said cause.

And the undersigned hereby further agree that no advantage shall be had or taken, by reason of this cause not being filed within the time prescribed by law, but the same shall be tried on its merits when reached in its order on the docket of the Supreme Court.

By, Parker, Eastman, & Plato
Attorneys for Appellant
Dany Parks — atty for Pffs.

State of Illinois,
Wane County vs J. Paul R. Wright, Clerk of the Circuit
Court of said County, in the State aforesaid
do hereby certify that the foregoing is a true and
complete copy of an agreed case filed in
my office, in the above entitled cause.



Witness my hand and the Seal
of said Court at Geneva in
said County, this twenty eighth
day of April A.D. 1837.
J. R. Wright
Clerk

George K. Slater
vs

Garth Pink & wife
Appeal from Kane

Agned Case.

Filed May 6, 1857
L. Leland
Clerk

In the Supreme Court of the Third
Grand Division of the State of Illinois,
of the April Term thereof, A.D. 1857

George H. Slater

Appellant

Caspar Trink &
Elizabeth Trink

Appellees

Appeal from the Kane County
Circuit Court.

And the said George H. Slater, by
Parker, Eastman, and Plate, his attorneys, now
comes and says, that in the record and pro-
ceedings aforesaid, there is manifest error in
this, to wit, —

1st Under the pleadings in this cause the said
Court erred in refusing to give the following
instruction to the jury, on the part of the said
George H. Slater, viz. — "If the jury find
for the plaintiffs, yet, they are not entitled
to damages excepting for the injury and pain
on the day of the injury

2nd The said verdict is manifestly against the
evidence given in the case.

3^d The verdict of one thousand dollars as dam-
ages to the said appellees, is manifestly ex-
cessive, and disproportioned to the injury
alleged by the said appellees to have been
committed ^{on the said Elizabeth Trink} and to the facts and circum-
stances as proven on the trial of said cause.

4th The said Circuit Court erred in refusing to

set aside the said verdict, and to grant a new trial on the issue in said cause.

5th The said judgment was given in favor of the said Caspar Rink and Elizabeth Rink; whereas by the law of the land it ought to have been given in favor of the said George K. Slater; wherefore the said George K. Slater prays that the said judgment may be reversed, annulled, and held for nothing; and that he may be restored to all things he hath lost by reason thereof.

By Parker, Plato, & Eastman,
His Attorneys

George K. Slater }
Appellant }
vs }
Caspar Rink & }
Elizabeth Rink }
Appellees }

In said Supreme Court,
Appeal &c.

And the said Caspar Rink and Elizabeth Rink, now come and say, that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid.

And the said appellees further say, that the said sum of one thousand dollars, so assessed by the said jury as aforesaid, is not excessive, and disproportioned to the injury alleged by said Appellees to have been committed, on the said Elizabeth Rink, and to the

facts and circumstances as proven on the trial of said cause: - And therefore they pray that the said judgment may be affirmed, and that their costs may be adjudged to them.

Day & Parks Attys
for Pliffs

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George K. Slater
vs

Caspar Runk & Wife
In Supreme Court,
Appeal
from Kane —
Appointments of Juries
in error

Filed May 6, 1857
L. Leland
Clerk

Geo. K. Slater

vs

Washburn Rink

Elizabeth Rink

} Appeal from Case

The first point I make in the case is that the damages are excessive

It appears from the evidence that the affray took place in an orchard on the farm of Slater - The proof shows that the Rink was a Tenant of Slater's but that the orchard was expressly reserved from the lease, so that the Rinks were intruders there and were trying to plough the orchard without right and contrary to the wishes of Slater

The testimony of Butler should be received with considerable allowance, for it is contradicted by other witnesses

1st He swears that he was in the road only ten rods off. Cross Examination page 2 Abstract - Smith swears the road is 30 or 35 rods from the place Abstract page 4 -

2^d Butler swears that her life was despaired of about four weeks. To his knowledge, This is expressly contradicted by the Physician - See Angeles testimony page 3 Abstract -

3^d Butler swears that her health is

now feeble - The Physician their own
witness, Charles Stahon swears to the
contrary - These facts show the bias
of the witness -

The Evidence of the other witnesses
do not make a case for any such
damages -

The circumstances show great aggra-
vation, they were on his premises deter-
mined to blow them - There was evi-
dently a contest about the boys and
their mother were using force against
Slater - see Smiths Testimony page 4 Abs.

The 3^d Question is on the refusal of the
Court to give the Instruction -

This question is a simple question of
pleading and the position of the Af-
filant is that the Declaration alleges
damages sustained on a single day
and does not allege any continu-
ance of the sickness or suffering,
it is all confined to a single day
in the declaration -

R.B. Cook
of Counsel
for Affilant

Slater

ss

Rink & Rink

Argument

Book

Filed May 28, 1857

S. Leland
Clerk

6 M., and looking out at the window saw the defendant and the two boys exchanging words ; saw the defendant strike the horse, and saw him strike one of the boys with his fist ; by that time they came towards the house ; the old lady and a little girl eleven years old ran out ; witness went out ; the boys were crying ; when the old lady got near the defendant he, the defendant, struck her three or four blows with a hoe, on her back, side and hand ; she fell ; Slater struck her after she was down once or twice with a hoe ; witness came to her, lifted her up and led her to the house and put her on the bed ; I heard the boys crying ; they said that Slater was whipping them ; when I took her in, her hand was swollen as large as an egg ; to my knowledge her life was despaired of about four weeks ; she remained in bed about four weeks ; at present she is very sick ; witness says he is a clergyman of the Lutheran denomination ; Drs. Howell and Angell attended her ; her hand is in a crippled condition ; Elizabeth Rink is the wife of Caspar Rink and is fifty four years of age ; is a person of small stature ; witness was at Rink's on a pastoral visit ; Elizabeth Rink was immediately put to bed, and for several days thereafter complained of pain in the back and hand, and had fever ; one or two of her fingers are stiff ; she has been deprived of the use of her hand since that time ; Rink and wife belong to my church at Aurora ; Mrs. Rink, before the assault, was a strong and healthy woman ; had never been sick in her life except when confined ; she had nothing in her hand and did not strike at Slater ; she has never been sick in her life except when she was confined ; once she was sick.

On Cross-Examination witness says :

When I saw the blows I was standing at the road ; I might have been near ten rods from the place where Slater was when he struck the old lady ; cannot say ; I might have been twice the length of this building, but not three times its length ; I saw Slater strike the horse and saw the mark on the horse's head ; I have been to see her frequently since ; to my knowledge she was well at the time ; never heard her complain ; I recommended Rink to Slater as a tenant ; Slater said he had a notion to take them as tenants, but said he had somewhat changed his mind, because he had heard that the old man was given to drinking ; I said to Slater, I had known him three years and to my mind it is not so ; Drs. Angell and Howell first treated her ; afterwards, Dr Nahar ; I do not know that she had been bitten in the hand by a dog ; I have been told by her husband that she had never been sick in her life ; I never saw her sick ; I did not say to Slater that I would be responsible so far as the tenancy was concerned ; the old lady seems to be a feeble person now ; one of the boys is fourteen, and the other eighteen or nineteen years of age.

Charles Wilson testified as follows :

8 I live in Wheatland, Will county ; about the first of May last I was going to Coleby's, and heard a noise over in the orchard, and saw a woman go up to Slater ; I saw Slater strike her with a stick two or three times ; could not tell what it was ; it might have been a hoe ; she fell down ; he struck her with considerable force, as near as I could tell ; the children were screaming ; he struck her after she was down, two or three times ; I did not know Rink at the time ; was passing along on my own business when I saw the assault.

On Cross Examination, says :

I was between Coleby's and Slater's houses ; about half way between ; I think the houses are about $\frac{1}{4}$ of a mile apart ; I was about 30 rods from the parties ; I was about ten rods south of Slater's house ; I did not see any man there except Rink's family and defendant ; there were three or four persons there besides Slater, two females, one of them about ten or twelve years of age, and two boys between twelve and fifteen years of age.

Jacob Rink testified as follows :

We went to plow ; Slater came with a hoe and said we must not do so any more ; Slater whipped the horse with the hoe, and whipped my brother with the handle ; my brother took up the corn plow ; my mother came out ;—Slater asked her if he should flail her ; I am fifteen years old ; brother is sixteen ; when my mother came out, she told us to come into the house ; she talked in German ; Slater whipped mother several times with the hoe, 9 on her back and hand ; I am fifteen years old, and am a son of the plaintiff's.

On Cross Examination witness said :

Mother had nothing in her hand ; she did not strike at Slater ; she asked us to come to the house and not plow any more until father came home.

Charles Nahar testified as follows :

I am a physician, and was called to see Mrs. Rink four weeks ago ; I found two of her fingers part broken, and incurable for life ; at that time with the exception of her hand, her health was pretty good ; since that time she has had the dysentery and Dr. Angell has attended her.

On Cross Examination witness says :

I have been a practicing physician for twenty years in Europe. I made her three visits, the last one about three weeks ago, the first about three weeks before that.

Lorenzo H. Angell testified as follows :

I am a physician ; I called on Mrs. Rink, in May, on Slater's farm ; I found some bruises on her buttock ; they were not very extensive ; the back of her hand was also black and blue ; the bone of the fore-finger of the left hand was fractured ; at this time she suffered from a febrile attack ; I cannot say that it was from the injury ; I cannot determine how much she suffered from the wound ; some febrile excitement might follow ; there was a non-uniting of the bone ; the bone has since united with some stiffness ; I think she will recover the full use of her hand ; she had fever, with 10 symptoms of billious derangement ; I cannot say that it was caused by the injury ; I visited her two or three weeks ; the bones were not united, and she came to my office, and I inserted a seaton, and afterwards the bones united ; I prescribed for her hand some time the last of August ; she went to work too soon, and worked on the farm ; she will recover the use of her hand ; she was not dangerously ; the skin was not cut ; the injuries were all bruises ; her fingers are still stiff.

On Cross-Examination, witness said :

The day after the injury, there was considerable febrile excitement ; it is my opinion that latent disease existed in the system at the time of the injury ; it is not usual for a broken bone in the hand to produce illness ; she

did not take proper care of her hand; I gave her two scoldings for not taking care of it; she worked out on the farm.

Luke Gates testified as follows:

I think Slater's property is worth about ten thousand dollars; know Slater's circumstances.

On Cross-Examination, says:

I think the distance from Coleby's house to Slater's house is about half a mile.

Asa P. Farnsworth testified as follows:

11 I think Slater's property is worth from nine to twelve thousand dollars; know Slater's circumstances.

The Plaintiffs here rested their case.

DEFENDANT'S EVIDENCE.

George P. Smith testified as follows:

The first occurrence was, the defendant and myself were at work on the farm—I went to plowing and the defendant went to trimming his orchard; the boys said something, and Slater said to them, go away; they came on the land where I was plowing; they had some difficulty; the boy came down and began telling about land, when I was plowing in the orchard; Slater told them to go off; they kept on down to the hedge; they kept hauling around on the land; Slater held up his hoe to ward off; they threatened to kill him; the old woman and girl came out; the girl had an apple-tree limb, and came at Slater with it, and the old woman came at his face and eyes; Slater told her to go away; she was down, then got up and acted as though she was hurt; the Priest came up; the boys were behind Slater cursing and swearing, and threatening to kill him; they took up a Shovel plow and swore they would kill him; this was about thirty or thirty-five rods from the road; I was Slater's hired man at the time; it is half
12 or three quarters of a mile between Slater's and Coleby's; I think it is eighty rods between Slater's and Coleby's; the old woman was in the field feeding cattle and hogs in a week or ten days after that time.

On CROSS EXAMINATION witness stated,

That he had no suits against Rink, the plaintiff; had some commenced, but was told they were dismissed; if I have any suits against Rink, I do not know it; went to Slater's because I had a right to; I have not a lease of Slater's farm as soon as Rink leaves it; I did not try to get up difficulty between Jacob Rink and Slater; I did not tell Rink that they must not feel hard with me as Slater had given me thirty dollars to swear for him: I had some cases commenced against Rink for his dog biting my wife's hand; I do not know any thing about suits of mine in this Court against Rink.

The defendant then introduced as evidence a written demise of his farm to Rink, which contains the following reservation, to wit:

14 "The said party of the first part reserves to himself what plough land there is in the orchard." The remainder of the lease or demise is not abstracted, having no bearing on, or relation to, the issue in this cause.

Defendant here rested his defence.

15 Jacob Rink, the witness, was recalled, and testified: I had a conversation with the witness, George P. Smith, near the corn-crib; Smith told me that Slater was to let him have thirty dollars to be witness for him.

This was all the evidence given on the trial.

- 15 The defendant, by his counsel, moved the Court to instruct the jury, that "if the jury find for the plaintiffs, yet, they are not entitled to damages, excepting for the injury and pain on the day of the injury."
- 15 Said instruction refused.
- 16 Exception taken to the refusal of the judge to give said instruction.
- 16 Verdict of jury against defendant, and for one thousand dollars damages.
- 16 Motion of defendant to set aside the verdict, and grant a new trial; by reason that the verdict was contrary to the evidence, for the refusal of the said judge to give the said instruction to the jury, and that the damages awarded by the jury are excessive.
- 16 Said motion for new trial overruled.
- 16 Exception taken to the overruling of said motion.
- 16 Judgment rendered, and exception taken to the rendering thereof.
- 17 Bill of exceptions signed and sealed.
- 17 & 18 Instructions given to the jury on behalf of the plaintiffs.
- 19 & 20 Instructions given on behalf of defendant.
- None of the instructions given were excepted to by either party.
- 20-1-2 Certified agreement of the respective attorneys of the parties to the suit.
- 20 & 21 The questions and points of law arising in the case, and agreed upon by the said attorneys, are the following:
- 20 1st. Whether, under the pleadings, the said Circuit Court erred in refusing to give, on the part of the defendant, George K. Slater, the following instruction to the jury, to wit:
- 21 If the jury find for the plaintiffs, yet, they are not entitled to recover damages excepting for the injury and pain on the day of the injury.
- 2d. Whether the verdict of the jury in said cause was contrary to the evidence given on the trial thereof.
- 3d. Whether the sum of one thousand dollars so assessed by the said jury as damages to be paid by said appellant to said appellee, is excessive and disproportioned to the injury alleged by said appellees to have been committed on said Elizabeth Rink, and to the circumstances and facts as proved on the trial of said cause.
- 4th. Whether the Circuit Court erred in overruling the motion of the said appellant to set aside the said verdict of the said jury, and to grant a new trial on the issue in said cause.
- 5th. Whether the Circuit Court erred in rendering a judgment in favor of the said appellees on the aforesaid verdict in said cause.

B. C. COOK,
D. EASTMAN.

D. EVELMAN,
B. C. COOK,

24. Whether the verdict of the jury in said cases was contrary to the weight of the evidence, and the law on the facts of the injury.

val; that was a thing I had desired all my life of substance to acquire. Of