

No. 12319

Supreme Court of Illinois

Slater

vs.

Rink & Wife

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1819 May 14

12319

1857

your young my only

Please hold at the Court-house in Geneva, within
and for the County of Kane, in the Thirteenth 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. 1855.

Gaspar Rink & {
Elizabeth Rink {
his wife {
vs
George R. Slater }
Presumpt for Assault and Battery.

Be it remembered that the said plaintiff,
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
following, to wit;

State of Illinois
Kane County and the Circuit Court thereof for the
May Term A.D. 1851.

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

For that the said defendant on the to wit 6th day of
May A.D. 1854 with force and arms assaulted the said
Elizabeth Rink then and there and still being the
wife of the said Caspar Rink, to wit at Aurora
in said County and then and there with a hot
beat bruised wounded and ill treated her so that

her life was greatly dispeined of and knocked her down to and upon the ground and then and there cut bruised and wounded the person of the said Elizabeth Rink by means whereof the said Elizabeth Rink suffered great pain and her life was greatly dispeined of and other wrongs to the said Elizabeth Rink 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 Rink and Elizabeth his wife of four thousand dollars and therefore they bring suit.

B F Parkes

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

George K. Slater

Ads } In the Circuit Court of the County
Caspar Rink & } of Kane, of the May term thereof
Elizabeth Rink } A.D. 1856

And the said defendant, by Parkes 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 be the said defendant puts himself upon the country.

Objection

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
 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 mention-
 ed, to wit, on the day and year in the said dec-
 laration mentioned, at the County of Kane afore-
 said, with force and arms, &c, made an assault up-
 on the said defendant, and then and there violently
 attacked the said defendant, and with his 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 a-
 gainst the said Elizabeth Rink, as he lawfully might
 for the causes aforesaid, and in so doing did neces-
 sarily 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-

recency injury, or damage to the said Elizabeth Rink,
or to the said plaintiffs on the occasion aforesaid; and
so the defendant saith, that if any hurt or damage, then
and there happened to the said Elizabeth Rink, or to the
said plaintiffs, the same was occasioned by the said
assault so made by the said Elizabeth Rink on him
the said defendant, and in the necessary defence of him
the said defendant, against the said Elizabeth Rink,
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 ~~and~~ maintain their aforesaid action
thereof against him.

Parker & Eastman,
Atlys for Defendant;

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

Casper Rink }
Elizabeth Rink } Kane Co Cir Court
vs } Nov Term A.D. 1856
George K. Slater }

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

5

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

Parks & Day
Pff Atty

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 defendant withdrew his plea of the general issue, and the said parties to the said suit went to trial on the issue formed 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 & {
Elizabeth Brink & { Trespass for assault and battery in the
vs. { Kane County Circuit Court,
George R. Slater & {

Be it remembered that on the trial of this cause, at the November term of said Circuit Court, A.D. 1851, before a jury of twelve good and lawful men, empanelled and duly sworn to try said cause, the said plaintiffs, to maintain the issues on their part introduced one E. H. Bueker, as a witness in said cause, who testified as follows:
That on the 5th or 6th day of May, A.D. 1851, 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 dispaired of about four weeks. — She remained in bed about four weeks — Witness says he is a deacon of the lutheran denomination, — Drⁿ Howel and Angell attended her. — Her hand is in a crippled condition. — Elizabeth Rink is the wife of Casper Rink, and is fifty four years of age, — is a person of small stature, — Witness was at Rinks 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, — Mrⁿ 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

7

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 nearer rods from the place
where Slater was when he struck the old lady, — con-
not 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 man on the
horses head, — I have been to see her frequently
since. — To my knowledge she was well at the time,
— I recommended Rink to Slater as a tenant, — Slav-
ter 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 drink-
ing, — I said to Slater I had known him three years,
and to my mind it is not so. — Dr. Angell and
Hoewel 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 fable 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 Wheatland, Will County, — About the first of May
last I was going to Cobey'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 Brink at the time, — was passing 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 plaintiff 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 flog 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 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, — Mother was sick four or five weeks.

The plaintiffs then introduced Charles Nahur as a witness 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 Slater'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, —

10

I think she will recover the full use of her hand, — She had fever, with symptoms of bilious derangement, — I can not 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 hands, — 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 Caleb'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, — I know Slater's circumstances.

The plaintiffs here rested their case, and the said defendant, George H. 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 Slates' 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 Slates service because I had a right to, — I have not got a lease of Slates 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 anything 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 ~~last~~ 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 aforesaid 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 mupage,
 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 fur-
 nish 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
 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 out on the
 place and deliver to the said party of the first part
 two thirds of the wool when sheared and two thirds

of the increase^{1/4} 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 thrasher's bill for threshing 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-

cession of the said on the first of December A.D. 1858
 together with all tools implements and all property be-
 longing 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 here-
 unto set their hands this 17th 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 here 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 D.
 Smith near the Corn crib, — Smith told me that Sla-
 ter was to let him have thirty dollars to be a wit-
 ness for him.

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

And no ^{other or} 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 in-
 struct the jury that, "If the jury find for the plain-
 tiffs, 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 disproportionate 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.

17

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 ^{Seal}

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 shew 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 willfull.

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 Pink, 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 Plaintiff, 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 Plaintiff, 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 Pink 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.

We 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 Wayne at the November term of said Court, A.D. 1856, and of the Bill of Exception 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 N. Staleo the following instruction to the jury to wit:

21

"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.

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 said jury as damages to be paid by said appellant to said appellees, is excessive, and disproportionate to the injury alleged by said appellee 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 the 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
Davy Parks - Atty for Pff.

State of Illinois
Kane 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
Kane County, this twenty eighth
day of April A.D. 1837.

J. R. Wright
Clerk



George K. Slater
vs
Gaspar Kink & wife
Appeal from Kain
Agreed Case.

Filed May 6. 1857
S. 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 K. Slater

Appellant

vs

Casper Rink &

Elizabeth Rink

Appellees

Appeal from the Kane County
Circuit Court.

And the said George K. Slater, by Parker, Eastman, and Plate, his attorneys, now comes and says, that in the record and proceedings 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 K. 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 damages to the said appellees, is manifestly excessive, and disproportional to the injury alleged by the 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.

4th The said Circuit Court erred in refusing to

set aside the said verdict, and to grant a new trial on the issues 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 disproportionate 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 Atty
for Petts

George K. Slater
vs

Casper Pink & wife
In Supreme Court,
Appeal
from Kane —
Affirmments of Leindeer
in error

Filed May 6, 1857

S. Leland
Clerk

Isaac Slater

Bashaw Rinks & } { Appeal from Kane
Dixie Rinks

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 Rinks was a Tenant of Slaters 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 She 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 -

2nd 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 -

3rd Butler swears that her health is

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

The evidence of the other witnesses do not make a cause for any such damages -

The circumstances show great aggravation, they were on his premises determined to plow them - There was evidently a contest about the boop and their mother were using force against Slater - see Smith's 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 Appellant is that the Declaration alleges damages sustained on a single day and does not allege any continuance of the sickness or suffering, it is all confined to a single day in the declaration -

R. B. Cook
of Counsel
for Appellant

States

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Rink & Rink

Argumt

book -

Xed May 28, 1857

S. Leland
Clerk

M., and looking out at the window saw the defendant and the two boys ex-
changing 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. How-
el 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 com-
plained 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 knowl-
edge 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 bit-
ten 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 :

I live in Wheatland, Will county ; about the first of May last I was go-
ing 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 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 ; 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 disproportionate 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.

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