

No. **12141**

Supreme Court of Illinois

Main

vs.

McCarthy, et al

71641  7

United States of America
State of Illinois
County of Cook

S.S.

Pleas before the Honorable John
M. Wilson Judge of the Cook County Court of common
Pleas within and for the county of Cook and State of
Illinois at a regular term of the Cook County Court of
common Pleas begun and holden at the Court House in
the City of Chicago in said County and State on the sec-
ond Monday being the twelfth day of September in the
year of our Lord One thousand eight hundred and fifty
three, and of the Independence of the United States the
seventy eighth.

Present the Honorable John M. Wilson Judge
Daniel M. Shoy Prosecuting Attorney
Cyrus P. Bradley Sheriff
Walter Kimball Clerk

Attest

Be it Remembered that heretofore to wit on the Twenty fifth
day of August, in the year of our Lord One thousand eight
hundred and fifty three - came Charles Main Plaintiff
by Arnold & Say his Attorneys and filed in the office of
the Clerk of the Cook County Court of common Pleas, a
precipis for summons, which said precipis is in words
and figures as follows to wit:

Cook County Court of Common Pleas

Charles Mein

vs

Owen McCarthy

Jeremiah Conner

Jeremiah Gordon

Alfred Johnson

Stephen Sexton &

John Walsh

Trespass against & Battery & False
Imprisonment. Damages \$5000

The Clerk will issue summons
directed to Sheriff & returnable to
the next term of Court.

Arnold & Say

Attys for Plffs.

And thereupon a summons was issued in said cause out of the
Clerk's office aforesaid, which said summons is in words
and figures as follows to wit:

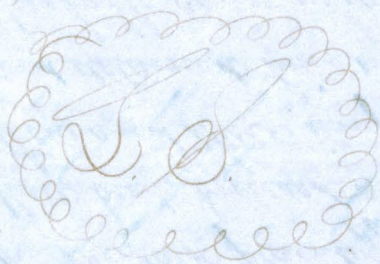
State of Illinois

Cook County Ill.

The People of the State of Illinois, to the
Sheriff of said County-- Greeting:

We command you that you summon Owen McCarthy, Jeremiah
Conner, Jeremiah Gordon, Alfred Johnson, Stephen Sexton &
John Walsh, if they shall be found in your County, personally
to be and appear before the Cook County Court of Common
Pleas of said County, on the first day of the next
term thereof, to be holden at the Court House, in the City of
Chicago, in said County, on the 2nd Monday of September
next, to answer unto Charles Mein in a plea of Trespass
for assault & Battery & False Imprisonment to the damage
of the said Plaintiff as he says in the sum of Five

Thousand Dollars. And have you then and there this writ with and endorsement thereon, in what manner you shall have executed the same.



Witness Walter Kimball, clerk of our said Court, and the seal thereof, at the City of Chicago, in said County, this 28th day of August A.D. 1853.
Walter Kimball Clerk

Served by reading to the within named Owen McCarthy, Jeremiah O'Connor, Jeremiah Gordon, Alfred Johnson, Stephen Sutton, & John Walsh this August 28th 1853.

C. P. Bradley Sheriff
By J. M. Norton Deputy

And afterwards to wit on the thirtieth day of August in the year aforesaid the said plaintiff filed in said cause a Declaration - which said declaration is in words and figures as follows to wit:

State of Illinois

Cook County Court of Common Pleas

of the September Term in the year of our Lord one thousand eight hundred and fifty three.

Cook County Jo. Charles Harris plaintiff in this suit by Arnold & Gay his attorneys complains of Owen McCarthy, Jeremiah O'Connor Jeremiah Gordon, Alfred Johnson, Stephen Sutton, and John Walsh, of a plea of trespass, assault and battery.

In that the said defendants, on the fourteenth day of August with force and arms &c to wit: with clubs, stones, sticks hands and feet made an assault upon the said plaintiff, to wit: at Chicago in the County of Cook aforesaid, and then and there seized and laid hold of the said plaintiff, and with great force and violence, pulled and dragged about him the said plaintiff, and then and there gave and struck the said plaintiff, a great many violent blows and strokes, and also then and there, forced and compelled the said plaintiff to go from and out of a certain house situated and being at Chicago aforesaid into the public street there, and then and there forced and compelled him to go in and along divers public streets, to a certain police office, situated and being at Chicago aforesaid, and then and there imprisoned the said plaintiff, and kept and detained him in prison there, without any reasonable or probable cause whatsoever, for a long space of time, to wit: for the space of one hour then next following, contrary to the laws and customs of this, and against the will of the said plaintiff, whereby he the said plaintiff, was then and there not only greatly hurt, bruised and wounded but was also, thereby, then and there greatly exposed and injured in his credit and circumstances to wit: at Chicago aforesaid.

And also for that the said defendants on the fourteenth day of August in the year one thousand eight hundred and fifty three, with force and arms &c made another assault on the said plaintiff to wit: at Chicago aforesaid, and then and there beat, bruised and ill-treated him the said plaintiff, and then and there imprisoned him the said plaintiff, and kept and detained him in prison there without any reasonable or probable cause whatsoever, for a long time to wit: for the space of two hours then next following, contrary to the laws and customs of this State, and against the will of the said plaintiff

And also for that the said defendants on the fifteenth day of August in the year one thousand eight hundred and fifty three, with force and arms &c, made another assault on the said plaintiff, to wit: at Chicago aforesaid, and then and there beat, bruised and ill treated him the said plaintiff, and then and there, imprisoned him the said plaintiff and kept and detained him in prison there without any reasonable or probable cause whatsoever, for a long time to wit: for the space of one hour then next following, contrary to the laws and customs of this state and against the will of said plaintiff.

And also for the said Defendants on the fourteenth day of August, A.D. 1853, with force and arms &c made another assault on the said plaintiff, to wit: at Chicago aforesaid, and then and there again, beat, bruised, wounded and ill treated him and other wrongs to the said plaintiff then and there did, against the peace of the People of the state of Illinois and to the damage of the said plaintiff of five thousand Dollars and therefore he brings his suit &c

Arnold & Day
Atty's for Plff

And afterwards to wit on the thirtieth day of September in the year aforesaid came the said defendant Owen McCarthy by Amos Top his Attorney and filed in the office of the Clerk of said Court his plea and notice, which said plea and notice is in words & figures as follows to wit:

Owen McCarthy et al.
vs
Charles Mann

And now comes the said Owen

McCarthy and defends the wrongs and injury when &c
and says he is not guilty in manner and form as the said
Plaintiff hath in his declaration alleged against him
and of this he puts himself upon the country &c

A. Voss
Defts Atty

The Plaintiff will take notice, that on the trial of this
cause, the defendant will offer evidence to prove and will
insist in justification of any alleged false imprisonment
and assault and battery, that at the time of committing the
said several trespasses in the said declaration mentioned
he the said Owen McCarthy was duly appointed Captain
of the night-watch within and for the City of Chicago
in the County of Cook and State of Illinois, duly sworn
and qualified, to act as such, and as such belonged to
the Police force of said City, and by the laws and
ordinances of said City, and the statutes, in such case
made and provided, became and was an officer of
said City, and a conservator of the peace within said City
and while he the said Owen McCarthy was then and there
so acting as aforesaid, the said Charles Main was then
and there guilty of a breach of the Peace and a violation
of the ordinances of said City, and he the said Owen McCar-
thy was then and there as such officer authorized with-
out warrant to arrest him the said Charles Main, and he
together with the other defendants, proceeded to arrest the
said Charles Main and carried him to the watch house
and that he used no unnecessary force in doing so and all
the assault complained of in the Plaintiffs declaration
and all the false imprisonment complained of was then
and there done by him while so acting as such officer

Already
defence

and in doing so, he was fully justified.

A Vols
def's Atty

And the Plaintiff will further take notice that the defendant Owen McCarthy on the trial of this cause will offer evidence to prove and will insist that at the time of the committing of the several grievances in said declaration mentioned, he was then and there a watchman and Chief a Captain of watch as such ^{within & for the City of Chicago and County of Cook-}
^{and State of Illinois} and duly elected and qualified, and all the said several pretended false imprisonments, assaults in said declaration contained and alleged, were done by him, within the City of Chicago while so acting as such watchman, he then being by such office a conservator of the peace, and by virtue of the laws of the State of Illinois, authorized to make arrests, with or without warrants, that he said defendant McCarthy while so acting as watchman as aforesaid was informed that a breach of the peace had been committed in the house of the said Plaintiff in the City of Chicago, by two means fighting, and he the said McCarthy while so acting was then and there informed by Alfred Johnson that there had been such fight at the Plaintiff's house, that the Plaintiff had resisted said Johnson who was then & there a watchman duly appointed and qualified within & for the City of Chicago aforesaid, in his efforts to arrest Captain Patrick Mahoney and George Brown who then and there had been guilty of disorderly conduct and fighting at the house of said Mann in the City of Chicago, and which information he the said McCarthy believed to be true and had reason to rely on, and then and there went to the house of Mann with the other defendants in this

resisted

Johnson

case, and then and there proceeded to arrest said Main for disorderly conduct, and resisting one of the police officers a watchman of the said City of Chicago and County and State aforesaid, and carried him off to the watch House, and that in so arresting him no unnecessary violence or force was used, and the assault complained of and the false imprisonment alleged in said declaration was done by the said McCarthy by him in the execution of his official duty, and by virtue of the powers, of watchman and Captain of the police, and said arrest was made at night, and said Main was only imprisoned for a short space of time, and no longer than was necessary to procure his discharge; and which evidence the said McCarthy will offer in bar and in justification of his acts in the plaintiffs declaration alleged.

Amos Voss, Atty

And afterwards to wit, on the thirtieth day of September in the year aforesaid, came the said defendant Jeremiah O'Connor by Amos Voss his Attorney and filed in the office of the Clerk of said Court his plea and Notice, which said plea and Notice is in words and figures as follows to wit:

Owen McCarthy et al.

vs

Charles McGe

And now came the said Jeremiah O'Connor and defends the wrong and injury when &c, and that he is not guilty in manner and form as the plaintiff has in his said declaration alleged against him, and of this he puts himself upon the country, and the plaintiff does the like &c

By A Top the defendants Atty.

The plaintiff will take notice, that on the trial of this action the defendant Jeremiah O'Connor will offer evidence to prove and will insist in justification of any alleged false imprisonment, that at the time of the committing of the said several supposed grievances in said declaration mentioned he the said Jeremiah O'Connor was duly appointed a night watchman within and for the City of Chicago, in the County of Cook and State of Illinois, duly sworn and qualified to act as such, and as such he belonged to the police force of said City, and by the by laws and ordinances of said City and the statutes in such case made and provided, became and was an officer of said City and a conservator of the peace; and while the said Jeremiah O'Connor was so acting as aforesaid the said Charles Main was then and there guilty of a breach of the peace and of a violation of the ordinances of said City, and he the said Jeremiah O'Connor was then and there authorized without warrant to arrest him, and he together with the other defendants proceeded to arrest said Charles Main and carried him to the watch house, and that he used no more force than was necessary in doing so. And all the assault and false imprisonment complained of in said declaration were then and there done by him while so acting, and in doing so he was fully justified.

breach of
peace -

A. Top defts Atty.

And the plaintiff will further take notice that the defendant Jeremiah O'Connor on the trial of this cause will offer evidence to prove, and will insist that at the time of committing the said

Several grievances in said declaration mentioned he the said Jeremiah O'Connor was then and there a watchman within and for the City of Chicago, in the County of Cook and State of Illinois duly appointed and qualified as such, and all the said several false imprisonments & assaults in said declaration contained and alleged were done by him within said City while so acting as such watchman, he then and there being by virtue of such office a conservator of the peace and by virtue of the laws of the State of Illinois was authorized to make arrests with or without warrants that he said defendant O'Connor while so acting as watchman as aforesaid was informed that a breach of the peace had been committed in the house of the said plaintiff in said City in two men fighting, and he said O'Connor while so acting was then and there informed by Alfred Johnson that there had been a fight at the plaintiff's house, and that the plaintiff had resisted said Johnson who was then and there a watchman duly appointed and qualified within and for said City in his efforts to arrest Captain Patrick Mahony and George Brown who then and there had been guilty of disorderly conducting and fighting at the house of the said Main in the said City of Chicago, and which information he said O'Connor believed to be true and had reason to rely on, and then and there went to the house of said Main with the other defendants in this case, and then and there proceeded to arrest said Main for disorderly conduct and resisting one of the officers of the said City of Chicago, and carried him off to the watch house, and that in so arresting him no unnecessary force or violence was used, and the assaults complained of and the false imprisonment alleged in said declaration were done by said O'Connor in the execution of his official duty, and by virtue of the power of a watchman and member of the police, and said arrest was made at night, and said Main was only imprisoned for a short

Breach
of peace

space of time, and no longer than was necessary to procure
his discharge, And which evidence said Clomer will
offer in bar and in justification of his acts in the plaintiffs
declaration alleged.

A. Top. defts Atty.

And afterwards to wit on the thirtieth day of September in the
year aforesaid, came the said defendant Jeremiah Gorden
by Amos Top his Attorney and filed in the office of the Clerk
of said Court his plea and notice, which said plea and notice
is in words and figures as follows to wit:

Owen McCarthy et al.
vs
Charles Main

And now comes the said Jeremiah Gorden
and defends the wrong and injury when &c. and says that he is not
guilty in manner and form as the said Plaintiff hath in his
declaration alleged against him, and of this he puts himself
upon the country.

A. Top defts. Atty.

And the plaintiff does the like

The plaintiff will take notice that on the trial of this action
the defendant will offer evidence to prove and will insist in justifi-
cation of any alleged false imprisonment, that at the time of
the committing of the said several supposed grievances in said
declaration mentioned he the said Jeremiah Gorden was duly

appointed a night watchman within and for the City of Chicago in the County of Cook and State of Illinois, duly sworn and qualified to act as such, and as such he belonged to the police force of the said City, and by the by laws and ordinances of said City and the statutes in such cases made and provided, became and was an officer of said city & a conservator of the peace; and while the said Jeremiah Gordon was so acting as aforesaid the said Charles Main was then and there guilty of a breach of the peace and of a violation of the ordinances of said City, and he the said Jeremiah Gordon was then and there authorized without warrant to arrest him, and he together with the other defendants proceeded to arrest the said Charles Main, & carried him to the watch house, and that he used no more force than was necessary in doing so, and all the assaults & false imprisonment complained of in the said declaration were then and there done by him, while so acting and in doing so he was fully justified.

A. V. P. deft atty

And the plaintiff will further take notice that the defendant Jeremiah Gordon on the trial of this cause will offer evidence to prove and will insist that at the time of the committing the said several grievances in said declaration mentioned he the said Jeremiah Gordon was then and there a watchman of the City of Chicago in the County of Cook and State of Illinois, duly appointed and qualified as such, and all the said several false imprisonments & assaults in said declaration contained and alleged were done by him within said City while so acting as such watchman, he then and there being by virtue of such office a conservator of the peace, and by virtue of the laws of the State of Illinois was authorized to make

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arrests with or without warrants, that he the said defendant
Lorden while so acting as watchman as aforesaid was
informed that a breach of the peace had been committed
in the House of the said plaintiff in two men fighting
and he said Lorden while so acting, was then and there in-
formed by Alfred Johnson, who was then and there a
watchman duly appointed and qualified within & for
said City, that there had been a fight at the plaintiff's house
and that the plaintiff had resisted said Johnson while
acting as such watchman in his efforts to arrest Captain
Patrick Mahoney & George Brown who then and there had
been guilty of disorderly conduct and fighting at the House
of said Main in the said City of Chicago, and which in-
formation said Lorden believed to be true and had reason
to rely on, and then and there went to the House of said Main
with the other defendants in this case, and then and there
proceeded to arrest said Main for disorderly conduct and
resisting one of the officers of said City of Chicago, and
carried him off to the watch house, and that in so arres-
ting him, no unnecessary force or violence was used, and
the assaults complained of and the false imprisonment
alleged in said declaration were done by said Lorden in the
execution of his official duty, and by virtue of the power
of a watchman and member of the police, and said arrest
was made at night, and said Main was only imprisoned for
a short space of time, and no longer than was necessary to
procure his discharge. and which evidence said Lorden
will offer in bar and in justification of his acts in the
plaintiff's declaration alleged.

A. J. P. depts. Atty

And afterwards to wit; on the thirtieth day of September in the year aforesaid came the said defendant Alfred Johnson by Arno Vop his attorney and filed in the office of the Clerk of said Court his plea and notice, which said plea and notice is in words & figures as follows to wit:

Owen McCarthy et al.
vs
Charles Mair

And now comes the said Alfred Johnson and defends the wrong and injury when &c and says that he is not guilty in manner and form as the said plaintiff hath in his declaration alleged against him, and of this he puts himself upon the country.

A. Vop defts. atty
And the plaintiff does the like

The plaintiff will take notice that on the trial of this cause the defendant will offer evidence to prove and will insist in justification of any alleged false imprisonment and assault and battery complained of, that at the time of committing the said several trespasses in the said declaration mentioned he the said Alfred Johnson was duly appointed watchman of the night watch within and for the City of Chicago in the County of Cook and State of Illinois, duly sworn and qualified to act as such, and as such belonged to the police force of said City, and by the by-laws and ordinances of said City, and the statute in such case made and provided became and was an officer of said City and a conservator of the peace within said City; and while he the said Alfred Johnson was then and

Breach of
peace

there so acting as aforesaid, the said Charles Main was then and there guilty of a breach of the peace and a violation of the ordinances of said City, and he the said Alfred Johnson was then and there authorized without warrant to arrest him, and he together with other defendants proceeded to arrest said Charles Main and carried him to the watch house and that he used no more force than was necessary in doing so. and all the assaults and false imprisonment complained of in said declaration were then and there done, by him while so acting, and in doing so he was fully justified.

A. G. P. depts Atty

And the said plaintiff will further take notice that the defendant Alfred Johnson on the trial of this cause will offer evidence to prove and will insist, that at the time of committing of said several grievances in said declaration mentioned the said Alfred Johnson was then and there a watchman within and for the City of Chicago in the County of Cook and State of Illinois, duly appointed, sworn and qualified as such and all the pretended several false imprisonments and assaults in said declaration contained and alleged, were done by him within said City while so acting as such watchman, he then and there being by virtue of his said office a conservator of the peace, and by virtue of the laws of the State of Illinois authorized to make arrests with or without warrant; that ^{he} the said defendant Johnson while so acting as watchman as aforesaid saw a breach of the peace committed in the house of the said Plaintiff in said City in two men fighting, and the said defendant then and there entered the said house as he lawfully might, and proceeded to arrest Captain Patrick Mahoney, one of the men fighting, and take him to the

watch house; and that, while said defendant had taken the said Capt. Mahoney into his custody and was proceeding to carry him to the watch house, the said Plaintiff Charles Main well knowing the said defendant Johnson to be a watchman as aforesaid, resisted the said Johnson in his efforts to take said Mahoney out of Plaintiffs house, threatening to throw said defendant out of the house, and trying to take said Mahoney out of defendants custody; that said defendant succeeded with great difficulty and after great delay, occasioned by the said Plaintiffs resistance as aforesaid, to carry the said Mahoney to the watch house, and that defendant then and there reported the said Plaintiffs resistance and breach of the peace as aforesaid to Owen McCarthy, then and there Captain of the night watch, within and in the City of Chicago and was and then ordered by the said McCarthy to arrest the said Plaintiff without warrant and to carry him to the watch house and then and there proceeded to the house of said Main with the other defendants and proceeded to arrest said Main for disorderly conduct and resisting one of the officers of said City, in the discharge of his official duty, and carried him off to the watch house and that in so arresting him and carrying him to the watch house, no unnecessary force or violence was used, and the aforesaid complaints of and the false imprisonment alleged in said declaration was done by the said Johnson in the execution of his official duty and by virtue of the powers of watchman and members of the police of said City of Chicago, and said arrest was made at night and said Main was only imprisoned for a short space of time and no longer than was necessary to procure his discharge and which violence said Johnson will offer in bar and in justification of his acts, in the Plaintiffs declaration alleged.

A. Top depts Atty.

And afterwards to wit on the thirtieth day of September in the year aforesaid came the said defendant Stephen Sexton by Arno Vop his Attorney and filed in the office of the Clerk of said Court his plea and notice, which said plea and notice is in words and figures as follows to wit:

Owen McCarthy et al.

Charles Major

And now comes the said Stephen Sexton and defends the wrongs and injury where, and says, that he is not guilty in manner and form as the said plaintiff hath in his declaration alleged against him, and of this he puts himself upon the country

A. Vop defts. Atty.

And the plaintiff does the like

The plaintiff will take notice, that on the trial of the above entitled cause the defendant Stephen Sexton will offer evidence to prove and will insist in justification of any alleged false imprisonment & assault & battery complained of, that at the time of committing the said supposed trespasses in said declaration alleged, he the said Stephen Sexton was duly appointed watchman of the night watch within & for the City of Chicago, in the County of Cook and State of Illinois duly sworn and qualified to act as such, and as such belonged to the police force of said City, and by the by laws and ordinances of said City and the statutes in such cases made

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and provided he become and was an officer of said City and a conservator of the peace within said City, and while he said Stephen Sexton was so acting as aforesaid, the said Charles Main was then and there guilty of a breach of the peace and a violation of the ordinances of said City and he said Stephen Sexton was then and there authorized without warrant to arrest him, and he together with the other defendants proceeded to arrest him said Charles Main and carried him to the watch house and that he used no more force than was necessary in doing so, and all the assaults trespasses and false imprisonments in said declaration complained of were then and there done by him while so acting, and in doing so he was duly justified —
A. Top depts. atty.

And the said Plaintiff will further take notice that the defendant Stephen Sexton will on the trial of this cause offer evidence to prove & will insist, that at the time of the committing of said several grievances, in said declaration mentioned said Stephen Sexton was then and there a watchman within & for the City of Chicago in the County of Cook and State of Illinois, duly appointed and qualified as such, and all the said several false imprisonment & assaults in said declaration contained and alleged were done by him within said City while so acting as such watchman, he then and there being by virtue of such office a conservator of the peace, and by virtue of the laws of the State of Illinois was authorized to make arrests with or without warrant, that he said Sexton while so acting as watchman as aforesaid was informed that a breach of the peace had been committed in the house of said

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plaintiff in said City in two men fighting, and he said
Sexton while so acting was there and there informed by Alfred
Johnson that there had been a fight at the plaintiffs
house, and that the plaintiff had resisted said Johnson
who was there and there a watchman duly appointed and
qualified within and for said City, in his ~~arrest~~ efforts
to arrest Captain Patrick Mahoney and George Brown
who then and there had been guilty of disorderly conduct
& fighting at the house of said Main in said City, and
which information he said Sexton believed to be true and
had reason to rely on, and then and there went to the
house of said Main with the other defendants in this
case, and then and there proceeded to arrest said Main
for disorderly conduct and resisting one of the officers of
said City of Chicago, and carried him off to the watch
house - and that in so arresting him no unnecessary force or
violence was used, and the assaults complained of, and the
false imprisonment alleged in said declaration were done by
said Sexton in the execution of his official duty, and
by virtue of the power of a watchman and member of
the police, and said arrest was made at night, and said
Main was only imprisoned for a short space of time, and
no longer than was necessary to procure his discharge
and which evidence said Sexton will offer in bar and in
justification of his acts in the plaintiffs declaration
alleged -

A. Top depts. atty.

And afterwards to wit on the thirtieth day of September in the
year aforesaid came the said defendant John Walsh by
Arno Top his attorney and filed in the office of the Clerk

of said Court his plea and notice, which said plea and notice is in words and figures as follows to wit:

Owen McCarthy et al.
vs
Charles Main

And now comes the said John Walsh and defends the wrong and injury when &c and says that he is not guilty in manner and form as the said Plaintiff hath in his declaration alleged against him, and of this he puts himself upon the country.

A. Voss depts. Atty.
And the plaintiff does the like.

The plaintiff will take notice that on the trial of this action the defendant John Walsh will offer evidence to prove and will insist in justification of any alleged false imprisonment, that at the time of the committing of the said several supposed grievances in said declaration mentioned he the said John Walsh was duly appointed a night watchman within and for the City of Chicago in the County of Cook and State of Illinois duly sworn and qualified to act as such, and as such he belonged to the police force of the said City, and by the by laws and ordinances of said City, and the Statutes in such cases made and provided, became and was an officer of said City & a conservator of the peace; and while the said John Walsh was so acting as aforesaid, the said Charles Main was then and there guilty of a breach of the peace, and of a violation of the ordinances of said City, and he the said John Walsh

Pr. of P.

was then and there authorized without warrant to arrest him and he together with the other defendants proceeded to arrest said Charles Main, & carry him to the watch house, and that he used no more force than was necessary in doing so, and all the assaults and false imprisonment complained of in said declaration were then and there done by him while so acting as such officer, and in so doing he was fully justified.

A. J. P. depts. Atty

And the plaintiff will further take notice that the defendant John Walsh on the trial of this cause will offer evidence to prove and will insist that at the time of the committing of the several grievances in said declaration mentioned, he was then and there a watchman within & for the City of Chicago in the County of Cook and State of Illinois, duly appointed and qualified as such, and all the said several pretended false imprisonments & assaults in said declaration contained and alleged, were done by him within said City while so acting as such watchman, he then and there being by virtue of such office a conservator of the peace, and by virtue of the laws of the State of Illinois authorized to make such arrests with or without warrants; that he said defendant Walsh, while so acting as watchman as aforesaid was informed that a breach of the peace had been committed in the house of the said plaintiff in said City in two men fighting, and he the said Walsh while so acting was then and there informed by Alfred Johnson that there had been a fight at the plaintiff's house and that the plaintiff had resisted said Johnson who was then and there a watchman duly appointed and qualified within and

for the said City, in his efforts to arrest Captain Patrick Mahoney and George Brown who then and there had been guilty of disorderly conduct and fighting at the house of the said Main in the City of Chicago, and which information he the said Walsh believed to be true and had reason to rely on, and then and there went to the house of said Main with the other defendants in this case and then and there proceeded to arrest said Main for disorderly conduct and resisting one of the police officers & watchman of said City of Chicago, and carried him off to the watch house, and that in so arresting him no unnecessary force or violence was used, and the assaults complained of and the false imprisonment alleged in said declaration were done by the said Walsh in the execution of his official duty and by virtue of the powers of watchman and member of the police and said arrest was made at night, and said Main was only imprisoned for a short space of time, and no longer than was necessary to procure his discharge, and which evidence said Walsh will offer in bar and in justification of his acts in the plaintiff declaration alleged.

A. C. P. depts. Atty.

And afterwards to wit: on the Sixth day of October in the year of our Lord One thousand Eight hundred and Fifty three, said day being one of the days of the September term of the Cook County Court of Common Pleas, in the year aforesaid the following proceedings were had and entered of Record in said cause to wit:

Charles Mann

vs

Owen McCarthy Jeremiah O'Connor
Jeremiah Gordon Alfred Johnson
Stephen Sexton & John Walsh

Trespas

And now at this day comes
the said plaintiff by Arnold & Gay his Attorneys, and the said
defendants by Hoynes Voss & Waite their Attorneys also come and
upon being joined herein it is ordered that a Jury come and
thereupon come the Jurors of a Jury of good and lawful men
to wit:

Sidney Caswell Andrew Schall A. W. Metcalf John Casey
J. Snackenbush B. Bartlett E. Tyler William Bates.

And afterwards to wit: on the Seventh day of October in the year of
our Lord one thousand eight hundred and fifty three said day being
one of the days of the September Term of the Cook County Court
of Common Pleas in the year aforesaid, the following proceedings
were had and entered of Record in said cause to wit:

Charles Mann

vs

Owen McCarthy Jeremiah O'Connor
Jeremiah Gordon Alfred Johnson
Stephen Sexton & John Walsh

Trespas

And now again came the said parties
by their said Attorneys and the Jury empanelled in this cause

on yesterday also come, and after hearing the remainder of the evidence, argument of counsel and instructions of the Court retire under charge of an officer of the Court to consider of their verdict. And by agreement of parties it is ordered, that when the jury shall have agreed on a verdict they may reduce the same to writing sign and seal the same and afterwards be permitted to separate and to meet the Court to morrow morning.

And afterwards to wit: on the Eighth day of October in the year of our Lord One thousand eight hundred and fifty three said day being one of the days of the September Term of the Cook County Court of Common Pleas in the year aforesaid the following proceedings were had and entered of Record in said cause to wit:

Charles Mairs

vs.

Owen McCarthy, Jeremiah O'Brien,
Jeremiah Gordon, Alfred Johnson,
Stephen Sexton & John Walsh }

Jurors

And now again come the parties aforesaid by their Attorneys aforesaid and the jury empannelled in this cause, also come, and say, we the Jury find the defendants not guilty as charged in the said plaintiffs declaration.

And thereupon the said plaintiff enter his motion for a new trial herein.

And afterwards to wit: on the Fourteenth day of October in the year of our Lord One thousand eight hundred and fifty three said day being one of the days of the September Term of the Cook County

J. R. Allen Peter Finkler Elow Crane and George McLaughlin
who were duly elected tried and sworn well and truly to try the issue joined
as aforesaid, and after hearing the testimony on part of said plaintiff on
motion of defendants Attorneys, and it appearing to the Court that there
is no testimony to implicate the defendants Stephen Sexton and John
Walsh, it is ordered by the Court, that said defendants Sexton and
Walsh be discharged hereof and that they be permitted to testify in
this cause, to which the said plaintiff excepts, and thereupon the
Court of adjournment having arrived the further hearing of this

case is postponed until to morrow morning, to which time by
agreement of said parties the Jury are permitted to separate

Court of Common Pleas in the year aforesaid the following proceedings were had and entered of Record in said cause to wit:

Charles Mann
vs
Owen McCarthy et. als. } Trespass

This day came the said parties by their said Attorneys and after hearing the argument of Counsel on the said plaintiffs motion for a new trial in this cause the Court takes the matter under advisement.

And afterwards to wit on the Eighteenth day of October in the year of our Lord one thousand eight hundred and fifty three said day being one of the days of the September Term of the Cook County Court of Common Pleas in the year aforesaid the following proceedings were had and entered of Record in said cause to wit:

Charles Mann
vs
Owen McCarthy Jeremiah O'Brien
Jeremiah Lorde Alfred Johnson
Stephen Sexton & John Walsh } Trespass

And now again come the said parties by their said Attorneys and the Court being now fully advised on the said plaintiffs motion for a new trial in this cause overrules said motion.

Therefore it is considered that the said defendants do have and recover of the said plaintiff their costs and charges by them about their defence in this behalf ex-

pended, and have execution therefor—

And thereupon the said plaintiff enters his exceptions, herein to the opinion of the Court overruling his said motion, and prays an appeal to the Supreme Court of the State of Illinois which is allowed and appeal bond to be approved by the Court and filed herein within thirty days from this day.

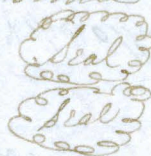
And afterwards to wit: on the twenty fifth day of November in the year of our Lord One thousand eight hundred and Fifty three, the said plaintiff filed in said cause his appeal bond which said bond is in words and figures as follows to wit:

Know all men by these presents that we Charles Main and Joel Ellis of the County of Cook and State of Illinois are held and firmly bound unto Owen McCarthy Jeremiah Alcorn Jeremiah Loden Alfred Johnson of the same County and State in the penal sum of two hundred dollars current money of the United States for the payment of which well and truly to be made we bind ourselves our heirs, executors and administrators jointly, severally and firmly by these presents. Witness our hands and seals this 25th day of November A.D. 1853.

The condition of the above obligation is such that whereas, the said defendant on the trial of the said cause at the same term were found "not guilty" by the verdict of the jury duly sworn and empanelled to try the said cause and judgment was thereupon rendered against the said plaintiff for the costs of the said suit, from which said judgment and decision of the said Cook County Court of Common Pleas

the said Charles Main has prayed for and obtained an appeal to the Supreme Court of said State. Now if the said Charles Main shall duly prosecute his said appeal with effect and shall moreover pay the amount of the judgment, costs, interest and damages, rendered and to be rendered against him, in case the said judgment and decision shall be affirmed in the said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue

Charles Main
Joel Ellis



Approved by me this 25th day of Nov^r 1853

John M. Wilson. Judge of the Court
County Ct of Cin Pleas

And afterwards to wit on the Twenty Sixth day of November in the year of our Lord One Thousand Eight Hundred and Fifty Three the said plaintiff filed in said cause his stipulation which said stipulation is in words and figures as follows to wit:

Charles Main }
vs }
Owen McCarthy et al }

It is stipulated & agreed that the time for filing Bill of exceptions in above cause be continued & extended until such time as the same shall be settled by counsel the time however to be extended no longer than thirty days from date hereof.

Chicago Nov. 26. 1853

H. F. Waite of counsel

And afterwards to wit: on the sixth day of March in the year of our Lord one thousand eight hundred and fifty four, the said Plaintiff filed in said cause his Bill of Exceptions, which said Bill is in words and figures as follows to wit:

Crook County Court of Common Pleas

Charles Main

vs.

Owen McCarthy et al.

3
2
1
0

Bill of Ex.

Be it remembered that on the ^{sixth} day of October A.D. 1853 the said cause being at issue came on to be tried before the Hon. John M. Wilson Judge of the said Court and a jury duly empanelled to try the same, the plaintiff to maintain and prove the issue on his part called H. A. Holcomb sworn on part of plaintiff, testified and acquainted with McCarthy the defendant. I boarded with the plaintiff through the month of August. I recollect the circumstances of Mr. Main's arrest, it was sometime in the month of August on Sunday. I recollect some men coming into Main's house one night between eleven and twelve o'clock in the evening. Mr. Main was behind his counter attending to his business. I was in the room. He had been attending to his business. A couple of men came in, I supposed to be watchman & said they wanted him Main to go to the watch house. They carried a club such as watchman generally carry, Main said they had no right to take him. They went away and McCarthy came in afterwards. I don't know that I could call anyone that came in there except McCarthy by name. This man Johnson looks like one of them. I think he is one of them. He was one of them that came in first and McCarthy came in afterwards some 7, 8 or 10 came in with

McCarthy. I don't see them here, don't know that I would know them if I saw them. McCarthy when he came in asked Main why he did not go with his watchman. Mr. Main asked him where his authority was and McCarthy showed him his cane and said "I will show you my authority and he shook his cane at him" and then he ran down the end of the counter and one of the watchman jumped over the counter and shoved him Main along out from behind counter. Main said let me get my hat and coat" and McCarthy said he should not wait for his hat and coat and he then hit him with a club saw Main dodge, and some one said at the time don't strike him, and they shoved him right out saw McCarthy make a pass at him with his cane a hooked cane, they then took Main to the watch house. They took him out as rough as they would take the biggest scoundrel in the world. His hat and coat were hanging up then at the end of bar, and Main said when they were pulling him along let me get my hat and coat and I will go along with you. I went up to the watch house found him there in a cell looked through a hole in the door and saw him took up his hat and coat to him, left Main there in the cell, about an hour afterwards Mr. Horn gave an order to let him out perhaps less than an hour. I did not hear of any charge made against him. I did not hear at the time of seizure of their making any charge against him

Cropped

What separates the dining room and bar room is a door with a curtain let down. I had been up stairs talking to Mrs. Main and heard loud talking and came down. I can't tell how

many were there. 5 or 6 besides two I supposed to be watchman. I saw Mr Johnson there afterwards when they took him. Two bar tenders and a man by the name of Fisher were there. The watchman requested Main to go with them and he said they had no right to take him and they left. This man (Johnson) pushed him out. As many as could get hold of him had hold of Main. Some 8 or 10 came in. I did not see any person attempting to take Main back and did not see any person resisting the watch, as many as 3 or 4 had hold of Main. Didnt hear McCarthy say that there had been a fight in this house and that he was a watchman. Heard conversation between Main & McCarthy I saw the fight between two men then or a part of it. This fighting was done about an hour before, one mans nose bit and another bitten on the chin, did not see any ring made and after they were down Charles Broadway separated them. The fight lasted about two minutes. Main was behind the counter. The biggest part of the crowd left after the fight. Fight had been over an hour when Main arrested.

Direct ^{as} The fight lasted two minutes. The men were down and the watchman came & took them away. Did not see Mr Main interfere with the men.

Confess ^{as} One had his nose cut & the other his chin, dont think there was a word said after they commenced the fight, as soon as I thought it was a serious matter I interfered.

Amos S. Horne sworn. I am Marshall of the City saw the watchman at 8 o'clock that evening. McCarthy was Captain of the watch

then

Mr Fisher. Sworn for Plaintiff testified. I was present at Main's at the time of the arrest. It was about 1/4 past 11 on Sunday night. I was across the street & passed across, was present when two persons came in. I heard a noise across the street and stepped in. There were some 20 persons in the room. Two men who I suppose were watchman remarked to Main that the Captain of the watch wanted him to come up to the watch house. Main said he doubted their authority and wanted a subpoena or summons before he would go. They went out and about five minutes elapsed and they again came in and said that the Captain of the watch insisted that he should go. He repeated the same remarks as before and turned around to me and asked if he did right. The Captain then came in & insisted that he should go. Main reiterated his refusal to go. McCarthy then reached across the counter with his cane with the hooked end towards Main and then McCarthy went around back of the bar and put the hook of the cane around Main's neck & dragged him along and one watchman jumped over the counter and led Captain Main between them. The one who jumped over the counter or McCarthy struck Main with a watchman's club on the back of his hand. Main was in his shirt sleeves, no hat nor coat on, McCarthy ordered them to bring Main along. Main asked for his hat and coat and McCarthy said he would not let him get them. When I first came in Capt. Main was persuading two men to go out. I saw Main striving to keep peace and order in his house, all the time I was there.

Crop. & D.

I wrote an article about the arrest which I read to Mr Main and which Main approved I did not publish it about the time McCarthy came in or immediately with him came in some persons. I should judge as spectators I remembered that the one that jumped over the counter had a club. There were only 2 or 3 with McCarthy. Main said to McCarthy I will not go without sufficient authority. McCarthy said will you resist the right watch or words to that effect. Main said he would not go out of his house without sufficient authority. Main as he was going out at end of bar struggled back and took hold of bar and some one struck him on his hand and the man on the inside raised his club. Main shook his hand as if he was considerably injured dont recollect his tearing McCarthys coat

Direct resumed. I saw the club a cane coming down. I saw Mains hand next morning, his hand was twice as large as it ordinarily would be. But one blow received. at the time of blow and immediately after he asked for his hat and coat. One of the persons said dont strike before blow given.

William Colley, sworn. I was present at Mains on Clark Street at time of arrest. In the first place two watchmen came in after general fight was over about 5 minutes after and wanted Main to go to watch house. Main said he wouldnt go without a summons from Captain of the watch. He was not doing anything he was behind the bar at time afterwards

McCarthy came in and asked him if he resisted his watch.
He said he did he wouldnt go without summons. McCarthy
then reached over the bar with his cane. I was behind
the bar at the time and Main. a watchman jumped
over the bar, a third man came around the end of bar.
^{I cannot recollect the name of the man who jumped over the counter. they pushed Main.}
He said he would go along peacefully if they would let him
get his hat and coat. He said so before the blow on his hand
was given. McCarthy said he couldnt have it. His coat
and hat were in the bar. The next morning his hand was
badly swelled. Main was not engaged in making any
disturbance and had not done anything. I was wait-
ing on bar.

^{the house had been opened.}
Cup. & D. Watchman jumped over alongside of me. I saw a
^{crowd of men} number of men come into the house that called themselves
watchman. I knew Johnson he was one of the watchman. Mr
Main was standing behind the bar. Mr Main said he would
not go without a summons from the Capt. of the watch, and
McCarthy then came in and said he had a charge against
him & Main wanted to know what he wanted to arrest him for
and wanted a summons before he went. McCarthy then
went around the bar and a watchman jumped over the bar
and pushed Main out of the bar. I saw them make a blow
at Main, but did not see who struck. I saw McCarthy raise
his cane. They took him away and I afterwards saw him
in the watch house & took up his hat and coat and went over
to Harris & got him out by order from Horn. the whole fight
& all took about half an hour.

[1891-17] Horace Hatch sworn for plaintiff. I was present at arrest of

Main. Joo came in and wanted Main to go with them to the watchhouse, and Main said he did not want to go without a warrant. McCarthy then came in and one of the watchmen jumped over the counter and a number started for end of counter. McCarthy had a hooked cane in his hand. Main was behind the counter at first McCarthy asked him why he did not go with his watchman, and Main said he would not go without a warrant. There were several there Main asked to get his hat and coat and ^{McCarthy said he could not get his hat and coat and} saw him strike him on the hand before he asked for his hat and coat, saw him when they took him to watchhouse.

Crop. 100. I think that Main stepped around the bar and tried to separate the men that were fighting. The police officers came in during the fight and carried them off. Fight lasted about a minute.

Mr. Kiesel sworn for plaintiff. I was at Main's at time of arrest saw McCarthy and Jeremiah Gordon there. He and McCarthy took Main out from behind the counter, did not see Johnson & Walsh there. There were several watchmen there, can't state who were there. McCarthy hauled him out with a cane and the man behind shoved him along. I believe Gordon struck him with his club, a watchman's club. Main spoke about getting his hat and coat.

Crop. 100. Know Gordon. Johnson wasn't behind the counter. Gordon's club struck him. McCarthy came around and Gordon jumped over. They had hold of each other behind the counter. McCarthy had his cane behind Main's neck & pulled him out about 8 or 10 in the room. He said he would not come at all. He asked for his hat and coat. Main did not do anything until they took hold of him.

And Santa sworn for plaintiff. I know Jeremiah O'Connor. Jeremiah O'Connor was there I was there first at about 25 minutes past eleven. Alfred Johnson was there did not notice Johnson, nor Sexton or Walsh was there. Have heard Sexton and Walsh say they were there that night O'Connor said he brought Main up to the watch house.

Cross. Q. Sexton and Walsh said they were there that evening and arrested Mahoney don't think Sexton or Walsh said, that they were there when McCarthy arrested Main. I was there at the time of the J. P. Army O'Connor said he came along very quiet. Sexton was there at the time of first J. P. He told me he was on the sidewalk when the prisoners Mahoney & Brown was delivered to him. I was there at the first. When I first came in Mr Johnson had Mahoney arrested & Melvin had Brown and I walked up to Johnson & Mahoney after he got his nose washed he went along.

Question State if you please what was said by persons then present in the crowd about resistance to the watchman taking Mahoney to the watch house? The plff objected to the question and the Court permitted the question to be put, to which decision of the Court plffs Counsel excepted.

Answer. After Mahoney got washed McCarthy asked me to take a man up to the watch house. Some present said he was hurt enough. There was a man arrested by the name of Hayden.

Question Was there anything said by any one present in the crowd in relation to resisting the Watch in taking Mahoney & Hayden by the watch, if so what?

The plaintiffs Counsel objected to the question and the Court permitted it to be put, to which decision the Counsel for plaintiff excepted. They were all talking then, some 20 or 30 then and considerable noise then. The noise brought me up from Water Street

I think I saw Main there in his shirt sleeves.

No such
question put
was such
admitted
on trial

Question. What did Johnson say to Hayden at that time. objected to & admitted. Do you recollect what he said. objected to & answer admitted by court. What was the character of the language from the crowd present to the watchman & objected to & answer admitted by court. Is the admitting of answers to said questions, the said plaintiffs counsel then & there excepted. & I think said Hayden abused him like a dog. & I could not state the substance of what was said then. Hayden talked loud in the crowd and there was a general kind of a row, a general mump, didn't hear any threats against the watch. It was all together within half an hour I should think from time of fight to time that Main was brought up.

Direct resumed. While I was there I did not see Main do anything to break the peace, he was quiet, so far as I know. I think Sexton and Walsh were speaking of the time they took Mahoney off, that was the subject of conversation. I am one of the watch and was acting as a watchman on the evening this took place. It was on the evening of the trial I heard them speak of being there. I understood that they were then at the Jap. I understood that they spoke of being there, saw Sexton & Walsh at the watch house that night. I wish to be understood now as saying that I did not hear Walsh & Sexton say they were at Main's when Capt McCarthey arrested him but that they were there before that. It was all a general mump.

Wm Hayden sworn for plff. I was there at the time of fight Main had nothing to do with it to my knowledge. I was there when Main taken.

The Defts counsel then moved to discharge Walsh & Sexton there being no testimony to implicate them. To which the plff counsel then & there objected. The Court thereupon discharged Defts

Johnson & Walsh, to which the said plff Counsel then & there excepted
The Plaintiff thereupon rested their case

The Defendants then offered in evidence the Ordinances of the City of Chicago, which were admitted as printed in Book of Ordinances, an ordinance relative to police & duties of watchman, which were admitted ~~and~~ also offered. It was also admitted that defendants were all acting and duly appointed watchman in the City of Chicago at the time of such arrest & affray & were so acting at the time of said affray, and also offered to produce and did produce John Walsh as a witness for the defence; the plaintiff then objected to all evidence being given for purpose of justifying under notice, to the giving of which evidence under said notice the said plaintiffs counsel excepted on ground of insufficiency of the notices, and the Court permitted the evidence to be given, to which decision of the Court the plaintiffs counsel then & there excepted. Said Walsh then testified. I am one of the parties sued. I was present at Mains House at time of arrest, stood at the corner of Water & Clarke Streets & heard a noise & stepped across the street stepped up quietly on the West side of Clarke Street and discovered it was Mains House. Door was open at this time, House lighted up between 11 & 12 o'clock on the 14th of August. We saw a man in his shirt sleeves coming towards the door who shut the door locking or latching it and went off from the door. Soon after Johnson came there and looked in at the door and demanded that the door should be opened, and the door was opened by him. He went in, I believe. He said he was one of the watchman. We walked across the street & went over to Mains House & went in then quietly. A great crowd of people were then swearing and cursing, some abusing John

son. Question. "What did persons in the crowd say to Johnson
objected to and Court permitted question to be put, to which
Plff counsel excepted. They called Johnson a damned pup. Main
said Mahoney shouldnt go & wouldnt go. We arrested Mahoney
he was bleeding at the nose a piece of nose bitten off. Brown
was out in the chin. I recollect what Main said. The language
used there was kind of swearing threats against us for arresting
Mahoney, didnt seem to think anything of taking Brown. McCar-
thy was not there at this time. We met him in the sidewalk
Question: What did you inform McCarthy that Plff had done or
been guilty of: objected to by plff counsel & question permitted
to be put, to which plff counsel then & there excepted. Infor-
mation was given to McCarthy that men in there tatted and
resisted us and we mentioned Capt Main as one, and, and McCar-
thy told us to go and arrest him, cant say whether it was 2 or
3 time when we went to house we arrested Main. We went in
& Johnson told Main to go with him to the watchhouse, Main
said he wouldnt. Main stood at the bar or in front of the bar
and we went out & told the Captain McCarthy and he went
back with us, and Main was then inside of the bar. McCar-
thy told him to come to the watchhouse that he was charged for
having a fight in his house and resisting the watch. Main swore
he be damned if he would and McCarthy went around the bar
and one other watchman jumped in behind the bar. Jeremiah
Gorden was present and shoved Main out. Main faced the
Captain and they collared one another. Main resisted with all his
strength until they came out. Gorden behind shoving him. It
was at the end of counter they had the hardest tussle. He held
on to the counter and the other watchman tried to get his hand
loose and he struck his hand to get it loose. Dont remember
of any others man being there with his coat off, saw no fighting
there a good lot of men inside from 15 to 20 there. We heard

the noise from 2 to 5 or 6 minutes before we went in -

Crab. &c. I saw no fighting there & no one took hold of officers to my recollection. We went there three times, before Main arrested, took Mahoney up first to watchhouse & two other men were taken. The third time we met McCarthy & told him nobody interfered with arrest of Mahoney other than language & nobody troubled us. It was some 5 to 10 or 15 minutes before we started with Mahoney. It took less than an hour to make all the arrests & take them up to watchhouse. There was no fighting going on then the 2^d & 3^d time we were there don't know where Melvin is.

Wm. Green Sworn. I am not a watchman. I was standing at Conleys door when row commenced. Mahoney had a bag down, some 5 or 6 men run calling out go it Mahoney, some man said shut the door & the watch came in & arrested Mahoney & took him to the watchhouse came back again & took Brown & Hayden. Johnson & another came in & said they wanted Main to go to the watchhouse. Main said he hadnt been doing anything and wouldnt go. McCarthy then came in & asked Main why he did not go with his watchman. Main said he wouldnt go with them or any other man without authority. McCarthy and another man then took him out from behind the counter bar, heard McCarthy say if watchman couldnt take him he could. Saw Main according to my recollection going towards door to shut it. Heard Main say nobody was a going to take Mahoney out of his house, didnt hear Main swear & saw no one take hold of watch. McCarthy came in in 5 or 10 minutes after watchmen went out. The matter lasted not much over half an hour from first. Didnt see them selling any liquor

Main stepped behind the bar and said he be damned if he was going Main after McCarthy took hold of him. got hold of his collar When Main was coming out he put his hand on the counter & one of the watchman Sorden struck him on the hand.

Expt. 4 McCarthy had his cane hooked around his Mains neck, reached over the counter with his cane and hooked it around his neck & tried to pull him from around the bar. They had hold of him all over. The fight between Mahoney & Brown was over in two minutes. Didnt see Main making any resistance, didnt see him use any force at any time, said he wouldnt go without a piece of some kind

Expt. Miller Sorden. was present at Mains. came up from Water Street quite a noise there. Johnson asked them to open the door & pushed the door open. I went in with Army Sorden, myself and Johnson took Mahoney and the other man apart. I took a man by the name of Brown. Some of the people there said Mahoney wouldnt go and they didnt want him to go (The testimony as to what was said was taken subject to exceptions made by plff counsel). Main said he didnt want that man to go up, he laid his hand on Johnson to keep him from going up. Johnson gave Mahoney the privilege of washing himself. House pretty full. Main opened the door and shoved two young men out

Expt. 5 They had a kind of circle formed. Main put his hand on Johnsons shoulder. didnt say anything. I saw no fighting there after that time. Main grabbed hold of Johnson and said Mahoney shouldnt go to the watchhouse.

Mc Connolly, Sworn, testified. I am stopping at the St. Charles Hotel
disturbance at Mains went out to see looked in and heard
someone say close the door lasted about 10 or 15 minutes. Saw
Main going along on sidewalk about half an hour afterwards
with watchman, he had his coat on.

James Horn, Sworn, I am Chief of Police let Main out that evening he
was arrested.

The Defence thereupon rested and after argument had before the
Jury, the Judge of the said Court was asked by the plaintiffs
counsel to give the following instructions numbered 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11.
12. 13. 14. 15. and the said Judge gave the instructions asked for by
plaintiff numbered 1. 2. 3. 4. 5. 6. and refused those numbered 7. 8. 9. 10.
11. 12. 13. 14. 15.

1
If the Jury believe from the evidence that the depts. were guilty
of the assault & Battery and false imprisonment as charged, that
the facts alleged in justification are not proved, or in case more
violence was used than was necessary then the manner of the sei-
zure the weapons used (if any) the blows given (if any) and
all the circumstances proved as proper to be considered in de-
termining the amount of damages.

2
Should the Jury believe from the evidence that depts. were
justified in seizing Plff. still if they also believe from the
evidence that they had abundant ^{to enable them} force to make such seizure
without personal violence and that in making such arrest
they unnecessarily used a cane or watchmans club and
unnecessarily hooked the cane around plff. neck and pulled
him with it, and that they unnecessarily struck him a violent

blow on his hand then against all such of the Defts. if any
assured such unnecessary violence the Plff is entitled to recover

8
Given
10 Head
138 3

If the Jury believe from the evidence that the seizure of Plff.
by the Defts was from the facts proved unjustifiable & if they also
believe that Obanner took Plff to the watchhouse by order of
Capt. McBarty, the Plff is entitled to recover against Obanner
as well as by those by whom he was seized.

4
Given

If the Jury believe from the evidence that there was an affray at
Plff house - that he took no part in it - that he did not encour-
age it & that he was guilty of no violation of the peace and
made no resistance to the arrest of parties charged then the
Defts were not justified in arresting him without
process.

5
Given

In making an arrest it is the duty of a watchman to use
no unnecessary violence and they have no right to inflict
personal violence on a party with a cane a club except in
case of absolute necessity, and if in this case the Jury believe
from the evidence that the defendants or any of them did inflict
personal violence on plff with cane or club when they had
sufficient force to take him without such violence and
that such violence was unnecessary then the Plff is entitled
to recover against all such - if any as such violence.

6
11. Dec 17

If the Jury believe from the evidence in the case that Defts or
either of them used more force or violence towards Plff than was

Given
necessary to make the arrest Plff is entitled to recover against
those if any using such violence and force unnecessarily—

7
Refused
Even if Jury believe from the evidence that the Defts or any of
them had a right to arrest the Plff, yet if they also believe from
the evidence that Defts or either of them used more force than
was necessary, the Plff is entitled to recover. So the refusal to
give which instruction the said plaintiff by his counsel then &
there excepted—

8
Refused
If the Jury believe from the evidence of the plaintiff had been
guilty of a breach of the peace, yet if they also believe from the
evidence that it took place in the absence of the defendants they
would have no right to arrest Plaintiff without process—
So the refusal to give which instruction the said Plff by his counsel
then & there excepted—

9
Refused
Unless the Jury believe from the evidence that the Plff was guilty of
the acts set up in defendants notice of justification or some
of them—in the presence of some of the defendants then the jus-
tification is not made out & Plff is entitled to recover.
So the refusal to give which instruction the said Plaintiff by his
counsel then & there excepted

10
That the keeping an open tippling house on Sunday in violation of the
City ordinances even if the Jury believe that Plff was guilty of
such act, is no justification for the Defts, and if the Jury

Refused
believe from the evidence, that Plff was seized and imprisoned as charged by the declaration he is entitled to recover.
Is the refusal to give which instruction the said plaintiff by his counsel then & there excepted.

11 If the Jury find from the evidence either of the following propositions to wit

- 1 That the Plff had not been guilty of a breach of the peace as alleged or
- 2 That if he had been guilty yet it had not occurred in pursuance of Defts or any of them as alleged or
- Refused* 3 That the Defts did not proceed immediately to arrest Plff but left him and did not make the arrest until peace was entirely restored or
- 4 That in making the arrest they or either of them used more force than was necessary.

Then the Plff is entitled to recover.
Is the refusal to give which instruction the said plaintiff by his counsel then & there excepted.

Refused 12 If the Jury believe from the evidence that Plff had been guilty of a breach of the peace as charged, yet if they also believe from the evidence that before the arrest the affray was over and ended & peace restored, then the Defts had no right to make an arrest without process & if they did so

the plaintiff is entitled to recover.

Barb. Ex. L. p. 543

1 Rufel , 506

To the refusal to give which instructions the said plaintiff by his counsel then & there excepted.

13

Refused

If the Jury believe from the evidence that the Plff was seized and imprisoned as charged but that such seizure was made by the defts on the charge and information of Johnson of a breach of the peace by Plff. but that such arrest was not made until until the affray was over & peace restored, then there is no justification & Plff is entitled to recover.

Barb Ex. L. p. 45

Ruseo Li. Ex. p. 614

C. C. P. 74 To the refusal to give which instructions the plaintiff by his counsel then & there excepted.

14

Refused

If the Jury believe from the evidence that Plff was not guilty of any breach of the peace in the presence of either of the defts then they had no right to arrest & if the Jury believe from the evidence that he was seized by defts or either of them the Plff is entitled to recover.

To the refusal to give which instruction the plaintiff by his counsel then & there excepted.

15

Refused

If the Jury believe from the evidence that the defts or either of them were guilty of the assault and battery and imprisonment as charged then the Plff is entitled to recover unless the Jury are satisfied

From the evidence of all the following propositions-

1st That the Plff had been guilty of a breach of the Peace as alleged in Defts notice.

2nd That such breach of the Peace took place in presence of the Defts or some of them.

3rd That thereupon the Defts proceeded immediately to arrest the Plff.

4 That in making the arrest no more force was used than was necessary to make such arrest.

So the refusal to give which instruction the plaintiff by his counsel then & there excepted.

And the defendants counsel also asked the following instructions numbered 16, 17, 18, 19 and which were given by the said Judge.

If the Jury believe from the evidence that when the affray took place in which the watch interfered to arrest the parties actually engaged in the fight that the plff took hold of one of the officers to prevent such arrest, this was such an act a breach of the peace as authorized the defendants to arrest plaintiff without warrant.

If the Jury also believe that said defendants were peace officers of said City and that such arrest was made freshly or soon after such attempt to prevent said arrest, was made with a design to hold the Plff for further examination & to procure of him security to keep the peace.

So the giving of which instruction on the part of Defendants the plaintiff by his counsel then & there excepted.

Refused

Defts
16

X

Refused

17

Given

If the Jury believe from the evidence that defendants at the time of the arrest and imprisonment of said Plff were watchman of the City of Chicago, and acting as such, and that the said arrest was made during a riot, affray or breach of the peace within the said City in which the Plaintiff was or had been a recent participant by aiding, abetting or countenancing in his house the unlawful conduct of others engaged in such riot or affray and that his arrest was necessary to end such riot or to prevent a recurrence of new breaches of the Peace which there was reasonable ground to suppose might take place unless he was taken—such arrest was justifiable without any warrant or process and the verdict should be for defendants.

To the giving of which Instructions on the part of Defendants the Plaintiff by his counsel then & there excepted.

18

Given

If the Jury believe from the evidence that an unlawful assemblage existed at the Plaintiff's house on the Sabbath night & that a breach or breaches of the peace had occurred there, to which the Plaintiff was present aiding, encouraging or abetting them and that the Defendants being peace Officers of the City and acting as such in the necessary suppression of such breach of the peace or to prevent a recurrence of further breaches of the peace acted in good faith under the belief that an arrest of the Plaintiff with the others engaged was necessary to restore good order in said Plaintiff's house and the peace of said City—Then the law is for the defendants.

To the giving of which instructions on the part of the Defendants the Plaintiff by his counsel then & there excepted.

19

If the Jury believe from the evidence that the Plaintiff in this case

Given

had been engaged in aiding assisting or encouraging any breach of the peace and that recently after such breach of the peace occurred the defendants being peace officers of said City acting as officers charged with the conservative of the peace within the City - acted upon the information then received and upon reasonable grounds for suspicion against said Plaintiff and immediately after it occurred arrested the Plaintiff as the means of either suppressing the disturbance or procuring surety of Plaintiff as one of the offenders or to hold him for until further examination, then the law justified the arrest and imprisonment with or without a warrant.

Is the giving of which Instruction on the part of the defendants the said Plaintiff, His counsel then and there excepted -

Is the refusal of the Judge to give the Instructions asked for by Plaintiff's counsel numbered 7, 8, 9, 10, 11, 12, 13, 14 & 15, and to the giving of the Instructions as asked for by Defendants Counsel, the said Plaintiff by His counsel then and there excepted -

1st

Refused

If the Jury believe from the evidence that the defendants when they arrested Main, had good reason to suspect that the affray was not over, but would break out afresh in the house of Plaintiff, upon the retirement of ^{the} watchman, then said watchman were justified in making the arrest of said Plaintiff Main with or without warrant.

2nd

That if the Jury should find from the evidence that the Defendants in doing the acts complained of, were acting officially as watchman.

Refused
and that a breach of the peace had been committed at the house of said Main in the night time, and they believed that Main had been a participator in the breach of the peace, they had a right to arrest Main, without a warrant if they did so to carry Main to the Police office for examination.

3^d

Refused
If the Jury believe from the evidence that the plaintiff had committed or permitted any disorderly conduct within his said house in the City of Chicago, he is in law guilty of a breach of the Peace.

4th

Refused
If the Jury shall find from the evidence that the defendant Owen McCarthy was a Watchman of the City of Chicago, and that while so acting he was informed, that Charles Main had been guilty of a breach of the peace, and of resisting an officer of said City in attempting to arrest him, and Bona Fide believed such to be the case, they will acquit the said McCarthy.

5th

Refused
If the Jury should find from the evidence that the Plaintiff committed disorderly conduct at his house he is in law guilty of a breach of the Peace.

6th

Refused
If the Jury find from the evidence that the Plaintiff was engaged in keeping open a bar where intoxicating drinks were sold within the City

of Chicago, on the Sabbath day a night, when the arrest was made, he was then guilty of a breach of the ordinance of the City, and the officers had a right to make the arrest.

2^d

7th

If the Jury believe from the evidence that the Defendants made the arrest upon reasonable grounds of suspicion or information bona fide given, that the Plaintiff had been engaged in countenancing, or making any riot, or other breach of the Peace within his house by tumultuously threatening resistance to the officers during the affray, or acts of violence towards such officers or attempts to prevent the arrest of the offenders engaged therein or otherwise; and that acting as conservators of the peace, or watchmen, Defendants made the arrest of Plaintiff, as a means of procuring surety of said Plaintiff, to keep the peace, or to put an end to the affray or riot which had then recently taken place, or to hold him for further examination. The law is for Defendants.

8th

If the Jury believe from the evidence that an affray or riot had occurred in the night time at an unusual hour in the Plaintiff's house, and that the said Plaintiff was present aiding countenancing encouraging or assisting in said riot or affray and that immediately or soon after such affray or riot, the Defendants acting as watchman of the City of Chicago made the arrest in question as a means of procuring surety of said Plaintiff with others to keep the peace or until an examination could be had of the circumstances of the said riot, or affray, then the law justifies such an arrest without warrant and the law is for Defendants.

Instructions asked by Defendants.

Refrain
If the Jury believe from the evidence that the officers of the City when they arrested Charles Main, met with forcible resistance on the part of said Plaintiff which would have frustrated their efforts to secure his arrest, and that said officers, for the purpose of overcoming the said forcible resistance of the said Plaintiff Charles Main, struck a blow with a watchmans club on the hand of Plaintiff, with which he had grasped the counter, and if the Jury believe that this blow was not harder than was necessary to make said Plaintiff release his grasp, then the violence complained of was necessary and the law is for the Defendant.

Refrain
If the Jury believe from the evidence that the Plaintiff Main had committed an assault and battery upon Johnson one of the Defendants acting as an officer, while he was engaged in arresting one Mahony, for a breach of the Peace committed in view of said officer, in the house of said Main, and that such assault and battery was accompanied by threats of resistance if Mahony was taken, that this was such a breach of the Peace on the part of said Main as authorized the officers to arrest without any warrant, provided such arrest was made immediately or soon after, as the means of procuring surety for such breach of the Peace so committed, and for further examinations and that no unnecessary force was used in making said arrest.

And thereupon the Jury under the instructions of the Judge, ^{retired} to consider of their verdict, and after deliberation had thereon came into court and returned

a verdict of "Not Guilty" as to all the Defendants.

- And afterwards to wit; at the same September Term of said Court, the Plaintiffs Counsel made a motion for a new trial for the following reasons
- 1st Because the verdict was contrary to Evidence
 - 2^d Because the Court erred in refusing to give instructions asked for by Plaintiffs
 - 3^d Because the Court erred in giving the instructions asked for by the Defendants
 - 4th Because the Court erred in admitting evidence under notice of Justification, and because Court erred in admitting other evidence

And which said motion for a new trial after argument had thereon the Court overruled. Whereupon the said Plaintiff by his Counsel prays the said Judge to put his seal and signature to this Bill of exceptions.

Which is done this 5th day of March, A.D. 1854.

John M. Nelson Seal

Charles Main

Owen McCarthy & others

It is mutually agreed and stipulated that all printed copies of the City Charter & ordinances in force at the time of ^{the trial of} said cause under the authority of the City of Chicago shall be admitted to be read in argument, the same as if embodied in the above Bill of exceptions and that no objection shall be taken on account of failure of filing said Bill of exceptions.

Chicago Mar 6. 1854

J. H. Wayne Counsel for Defs.
Arnold & Say Atty for Plff

State of Illinois }
County of Cook } S.S.

I Walter Kimball Clerk of the Cook
County Court of Common Pleas within and for
the County and State aforesaid do hereby certify
that the foregoing contains a full true and cor-
rect copy and transcript of all the pleadings
on file in my office and of the Records of said
Court together with the bill of exceptions, in the
case of Charles Maine plaintiff and Owen
McCarthy et al. defendants, now on file in
my office.

In testimony whereof I have here-
unto subscribed my name and
affixed the seal of said Court at the
City of Chicago in said County, this
18th day of May A.D. 1874.

Walter Kimball

CLK

73

Wm. G. Hall

Wm. G. Hall

Wm. G. Hall

Wm. G. Hall

Filed June 14, 1854.
L.eland Cth.

Pepper

Wm. G. Hall

Wm. G. Hall

2141-28

Owen Mc Carthy et al
"ats."

Charles Marine

3
3
3

In Supreme Court.

Brief for the defen
dants in error.

Not knowing the points to be taken by the
plaintiff, I am compelled to notice the
objections taken below; & shall do so
in the order they are made.

1st In the asking of this question; an
objection was raised

State if you please, what was said by
persons then present in the crowd about
resistance to the watchman, taking Mahony
to the watch house?

Then all other questions
of like kind, asked & permitted to be
put by the Court; in doing so, there
was no error committed!

It was clearly a part of the ces gestas,
was not it admissible?

1. Quote of an Evidence Page 123 820 108

In reference to which subject the
author uses the following sensible
remarks,

"These surrounding circumstances
constituting part of the ces gestas, may
always be shown to the jury along with
the principal facts; & their admissibility -

is determined by the Judge, according to their
degree of their relationship to that fact, and
in the exercise of his sound discretion; it
being extremely difficult, if not impossible,
to bring the class of cases, within the
limits of a more particular rule, or
description.

same doctrine

Pool v. Bridges, 4. P. & R 378.

Phelps v. Hoots 1. Conn R 390

The next objection is to the admitting of the evidence under the notices: each of the defendants plead separately;

- 1st The general plea;
- 2nd two special notices.

I can best answer any objection of this kind by reference to

Pulley v. A. Rind. 3 H. & B. 258

"Conen J."

"The object of the statute allowing notices to be substituted for a plea, was to avoid the niceties of special pleading; being of a highly remedial character should be liberally construed."

Again

"Such notice is sufficient if it fairly put the plaintiff in possession of ascertaining the details of the defence, though they be not stated"

Same doctrine 20 L. J. R. 745.

Edwards v. The Queen 24 Wend. R. 482

The objection I understand to be taken to these
notes is that they do not show what kind
of a breach of the peace, &c; This is no objection
Quincy vs. Key 5. Johns R 123.
Brk. v. Brantont, 3^d. Term R 183

No error was committed in giving the 7th instruction, asked for by the plaintiff

The Court refused to give this instruction, because he had already substantially given the same thing; - this is the case;

~~In *Barney v. Green*. 11. d. 267.~~

Prior is. White 11. d. R 262.

The Court say, it is not error to refuse an instruction, when another instruction is given, whereby the party asking it, has the full benefit of the law applicable to the conduct of the parties connected with the transaction.

same doctrine stated *Hand v. Reple* 3 *Scam* 346

We refer the Court to the
1st instructions

" 2.

"

" 5

"

" 6

"

given essentially
Embodying the same law.

The Court did not in refusing to give the eighth instruction; and here it is well to enquire what is the law, governing the case?

The City Charter, Page 52 City ordinances, section "18", is in these words;— "All officers of the City and created Conservators of the peace by this act, shall have power to arrest, or cause to be arrested, with or without process, all persons who shall break or threaten to break the peace, commit felonies or misdemeanors, and if necessary detain such persons in custody over night, in the watch house, or other safe place, and shall have ~~such other~~ and exercise such other powers as Conservators of the peace, as the Common Council may prescribe." We understand the position assumed is, that this puts the Police force of the City, so far as breach of the peace is concerned on the same footing as in the case of felons.

Admit for the sake of argument that such is the case, the instruction is wrong; for

1st It was the plaintiffs duty to see that the instruction asked for was right in itself, contained all the necessary qualifications, independent of the

instructions or qualifications on the other
side.

Hennan - B. Bloomed 11. dtd 177.

"Cataw Judge".

2nd. The instructions omitted one qualification
existing at common law independent of
the charter; A constable may arrest for
a breach of peace, without warrant, and
bring him before a justice, either seeing
A done, or a reasonable time after
A was done; or in the needs of peace
Marcy he may be allowed to wait
a reasonable time.

Taylor vs. Strong 3 Wend R 384.

Bacon (40 & 84) says Constable may arrest
for a breach of the peace, which he
has been present at, or had come
freshly after its occurrence.

^{3 Wend R 384}
1. Clutch Criminal Law 15-

Samuel vs. Rayno Douglas 35-9

3 Campbell 420

~~3 Wend R 384~~

It appearing from their authorities that the
defendants having the right to arrest
freshly after the breach of peace - the
8th instruction is therefore not law,
wanting that qualification, & the
Court very properly refused to give it

Smith's Instruction

The Court was right in
refusing to give it.

1st It was calculated to mislead
the jury;

2nd It needed qualification just
the same qualification was required
as to 8; the officers could arrest freshly
though not present; - ~~which~~ secondly,
it does not dispose of the plea of not
guilty; it should have been if the jury
found the ~~plea~~ defendants guilty as alleged
in the declaration &c

Instruction two.

It is subject to the same
objection

1st Calculated to mislead a jury, the
~~defendant vs. - after plaintiff~~, it simply
is, if that the keeping open a tippling house
is no justification, & if the jury find
that the defendants arrested &c as charged
in ~~the~~ declaration, ~~then~~ the plaintiff
is entitled to recover; - now this would
entirely mislead the jury from the breach
of the peace; - secondly it needed the

qualification, 'It might all be true yet
the plaintiff not entitled to recover, for the
defendants may have arrested him
for a breach of the peace, or right, or
freshly.

Instruction Eleven Refused.

1st This was to Compel, or as
~~was~~ calculated to mislead a jury.

2nd It is that if the jury should
find either of the ~~three~~ ^{four} propositions true.

I need not undertake to dem-
onstrate, for it will at once be admitted
that all these propositions must be true.

The first, second propositions, lack
qualifications - & the jury might find either
of the four true, yet not entitled to recover,
for they must also find the defendants
guilty of the false imprisonment as alleged.
in addition thereto before they can convict.

Instructions 12. 13. 14, are liable
to the same objection - they are not strictly
true, nor do they possess the needed
qualification, of "immediately after, or
freshly";

Instructions 15.

As calculator to mislead
the jury

2nd, Even if true that the imprisonment had taken place, & yet the plaintiff would not be entitled to recover through the jury was not satisfied of three propositions because they had the right to arrest freshly after the offence was committed

Instructions for the defence.

We have gone all along on the hypothesis of the law as laid down by Mealey in 3rd Maxwells R & have paid very little regard to the charter intending to notice it when came to the instructions for the defence; the refusal of the Court to give the plaintiffs charges asked for, & the giving the ~~plaintiffs~~ instructions given for the defence, are all within the rule of the Common Law; - But admitting for argument that is not so, the charter is clear. "Shall have power to arrest, or cause to be arrested, with or without warrant, all who shall break, or threaten to break the peace." The charter does not limit it to actual presence, occurring in their sight, - to so limit it, would be, to render nugatory a beneficial provision of the Charter, which the circumstances of this case, fully illustrate; - Maria was keeping open a tippling house on Sunday ^{evening} ~~at~~, at an improper house, having a fight, & aiding & abetting the fight, resisting the officers in their efforts to arrest the offenders, as the only way to stop the whole disorderly conduct, the defendants arrested him. Is the peace of our City to be disturbed by midnight brawls, because the Police officers did not see the fight, & they cannot get a warrant till morning. We say that such a construction is to be put on the City Charter, as will give the City officers ample power to arrest offenders.

By the last clause the City Council are
authorised to confer additional powers on
them; "shall exercise than on do other
powers as conservators of the peace as
the Common Council may prescribe
This they have done.

Nor will the judgement be reversed or
a new trial be granted, because the Court
below was divided the jury, on a question of law
if the Court can see from the whole
evidence, that the verdict is right"

Greenup vs. Stokes 3 Gilms 202
Lynch vs. Hedges 3 Scam R 15
Gillett vs. Surt 3 Geo 144
Leare vs. Penhew 8 E R 348
Fleming vs. Gilbert 3 John R 582

Some of the police officers were
present when the breach of the peace was
committed or when resisted the officers, &
tried to continue to try to arrest him
till he was actually arrested.

As to the power to arrest without warrant See
Bryant v Bates 15 Ill R 6 Ms Dec 1853 Springfield
also 1 Hale Pl R 587.8

Rev Stat '45 p 190 Sec 202

3 Wend R 350. 384

1 Chish Cr L 15

1 Dargl R 359

3 Camp R 420

Points Decided

That Charter of City Expressly authorizes Conservators of the
Peace to arrest without process for breaches of the peace
and threats to break the peace. Competent to pass such as
No objection assigned for error or discharging two clerks

Wm. Mc Carthy
Shat

also

Charles Morris

Truf

H. F. Warts

Assured

H. F. Warts

2109

for defense

Wm. Mc Carthy
Shat
also
Charles Morris
Truf
H. F. Warts
Assured
H. F. Warts
2109
for defense

Wm. Mc Carthy
Shat
also
Charles Morris
Truf
H. F. Warts
Assured
H. F. Warts
2109
for defense

Charles Maino

Orin McCarthy } It is agreed
that this case is submitted on written
briefs - & to be submitted when said
reached ^{or at all} events before N. F. Warts
Saturday,
July 5. 1854.

J. W. Arnold
Atty for Repp.

Agreement

[Faint, illegible handwritten text, possibly bleed-through from the reverse side of the page]

Supreme Court

Main
vs
McCarthy, et al

} Action Assault
& Battery and
False Imprisonment

Then Gen. Issue & Verdict
of Justification & that

1 Verdict

1 Mc Carthy was Capt of Watch

2 Main guilty of Breach of
Peace & violating ordinances
of C. & (do not state what
ordinance)

3 Mc Carthy & associates are
Threatened to arrest without
warrant & did so and
took Main to watch
house

2

Justifies on ground that
Main resisted Johnson
in arresting Geo Brown

Other defts Pleas, ^{& notices} Substanti-
ally similar

In Aug 1853 on Sunday Even'g
there had been a disturbance

at Mains Stone

Deft. came in with clubs & arrested
~~2d~~ Main. Mc Carthy hooked
a hooked cane about his
neck & others seized him and
others behind pushed him &
without hat or coat carried
him to the Watch House

without warrant or process
beating him with great violence
with a heavy hickory club

First Error

Improper Evidence admitted

150

Question to Jacob Sauter
by Deft.

"What was said by persons present
in the crowd about resistance
to the Watchmen taking Ma-
hony to Watch House?"

Defence justifies arrest of
Main on ground that Main
resisted officers in taking
Mahony &c

Declarations of persons in the
crowd would not justify
arrest of Main

No common design of fraud & Main to
traish is alleged nor solemn
declarations of crowd ought not to
charge Main

Quest. "What did Johnson (deft) say
to Hayden &c." improperly
admitted

"What was ^{present} character of language
from crowd." ? improperly ad-
mitted

Evidence in proper on two grounds
First. Statements incompetent
as to words spoken
2^d Quest. Should be "What
was said" & not allow
witness to give character
of what was said. It is
making witness instead
of jury judge of character
of language

Defts quest "What did persons
in the crowd say to John-
son?"

Ans. They called Johnson
a damned pup
This incompetent. There
was no connection between

Main and the Grand Jurors was
calculated to prejudice Main

Plaintiff asked Court to give two
instructions numbered from 1 to
15. The Court gave 6 & refused
to give 9. to the refusal of
Court to give each and every
of those refused - the Plff
accepted

The 7th Instruction is the law
It differs from Sixth which is
confined to the use of force "in
making arrests" while Seventh
is general

8th Instruction presents the
question whether a watchman
can arrest a person for a
breach of the Peace - without
process, when it was not
done in presence of officer

So of the 9th

See Rev Statutes
p 190 Sec 201
& sequel

State Constitution
Art. 8 - Sec 7 & 8

2 Greenleaf Ev p 85
Sec 99 & cases cited

7 Dana Rep 375

Sec 11 & 13 Instruction
Barbours Cr Law p 543
1 Russell on Crimes 506

10 Instruction was refused. It was
the law and clearly the Court
erred in refusing it. It is
in these words

That the Keeping an open tip-
pling house, in violation of
City Ordinances - even if the
Jury believe that the Pthf.
was guilty of such act is
no justification of Defts
And if Jury believe from the
evidence that Pthf was seized
and imprisoned as charged
by the Declaration he is
entitled to a new

Drifts sought to justify arrest & imprisonment of
Main on various grounds

- 1 That Main had been guilty
of a Breach of the Peace
- 2 Resisting the officers in
arresting Mahony
- 3 In keeping open a
Tippling House on Sun
day

The 10 Instruction assumes that
under the pleadings to the cause
the keeping a tippling house
open on Sunday did not
justify drifts for an assault
and Battery knocking
his hands to pieces with a hick
ory club & imprisoning P.H.
in a Watch House

It is no justification
First Because it is not plead
nor set up in notice as a
justification

The only grounds of justification in notice are - breach of the peace & resisting watchman

Outside of these - They attempt to find Pltff. kept a tippling house open Sunday. he asked the Court to tell the jury - this is no justification & the Court wrongly refused

That Defts. set this up as a defence, appears from the evidence & from Jury Instruction No 6 which they asked

The Keeping open a tippling house on Sunday does not authorize arrest and imprisonment - even if it had been in notice

The party doing so is liable to a penalty

Even City Ordinances do not
make it a justification for
arrest without process

The 17 18 & 19th Instructions
asked by Dept and given
are a departure from defense
set up in notice and
therefore should not
have been given —

Supreme Court

Main

vs

McCarthy et al

Brief

Main }
 McCarthy - } The notice was insufficient
 & did not furnish the foundation
 in the record for the admission of the evidence
 on the part of the defense. The notice must
 contain the substance of a good defense - viz
 15 Ohio 21 McClinchett & Fustick = 9 Shepley 160
 Washburn & Moreley - 11 Penn. 268 = Mounty
 & Knox = 5 Watts & Serg 361 = 15 & thus 473 = 20 id 144
 000 = 5 Huletts A. f. 125 = 1 Chipman 145 S. P. & 172, 507.
 1 Tyler 230 = 21 Pick 404 = 11 Ell - 612 Cook & Miller -

The first notice is insufficient as to the breach
of the Peace. Because it only states that McCarthy
 was an officer & while he was acting as an officer
 Main was guilty of a breach of the Peace, & that
 McCarthy was authorized to arrest him with-
 out warrant. This notice, as well as the proof
 fails to show that the breach of the Peace was
in the presence of the officer. Unless the breach
 of the Peace occurred in the presence of the officer
 & was continuing the right to arrest for that
 cause did not exist. 1 Russell on Crimes P. 598-
 to 607 = 2 Hawkins Pleas of the Crown P. 120 Sec 20 =
 1 bid. P. 129 - Sec. 8. 2 Rules Pleas of the Crown P. 89-
 290 - 3 Brevint Ad 798 = Box & Hammett. 11 Johns 486 -

The substance of the defense must be
 stated in a notice. authorities above cited ^{if we} admit
 all that the notice contains ~~there is no justification~~.

The affray was over at the time of the arrest
 & no right or necessity existed for arresting Main

The charge of violating other ordi-
 nances of the city is too loose & general
 for any purpose. That charge does not
 point to any thing from which plaintiff
 could find out what ordinance

was intended - Defendants might as well have said for violating the laws of this State - Plaintiff could not come prepared to justify without being advised what ordinance he had violated -

The right to arrest without warrant a citizen & deprive him of his liberty is the exercise of a very arbitrary power & ought not to be tolerated except in a case of necessity - And he who exercises that power ought to be prepared to say by what authority he did it - as to the sufficiency of notice see 11 Ill 612 Cook & Miller

The 2^d notice of justification is also bad. It avers that Mc Carthy was "informed" that "a breach of the Peace had been committed"

Now the authorities all agree that a watchman or constable cannot arrest a man for a breach of the Peace except on view of the same vide 1 Russell on Crimes 2 598 espousal = 2 Harv R. P. B. 2, 120 sec 20 & it 2 129 sec 8 = 2 Harv. P. B. 89. 90 &

S. Burr & Ad 798 - 11 John 466 ~~Mc Carthy~~ The case in 5th Wend 384 is not supported by the authorities therein cited - vide 2 Bacon's Abr. 348, 349 = for Felonies a Constable may arrest on information but on Misdemeanors & Breaches of the Peace the Constable can act only on view & not on information -

That Mann resisted the Officer at the time of the arrest "if true" would not authorize the defendant Mc Carthy to arrest Mann without warrant - neither at common law nor by the Charter nor ordinances of the City of Chicago -

The ordinances provide for fining the offender - but neither the Charter nor ordinances authorize an arrest without warrant - Revised Ordinances City Chicago 2 181 - Sec 13 =

The cause for the officer in such case is to see out a warrant, and have him punished for violating the City ordinance - Even if Muir had assisted or took part in the fight (which he did not) the officer after the affray was over could not take him without a warrant - It is only to prevent affrays & breaches of the Peace that an arrest is allowed without warrant.
1 Russell on Crimes P 548 & cases cited Supra -

// The notices of all the other dependants are the same as McCarty - liable to the same objections -

The plaintiff objected to the testimony under these notices & this was a proper mode of availing himself of their insufficiency - 11 Ill 612 =

The Evidence does not support or nor tend to support these notices = The Evidence is that the watch told McCarty that Muir had resisted them - that McCarty charged Muir with having had a fight in his house & having resisted the officers - will Mulsh's testimony for the defence -

This testimony does not even tend to support the justifications under the notices =

The testimony shows a flagrant abuse of the "little brief authority" with which these officers were clothed -

4

The 8th instruction asked by plaintiff
is refused by the Court, is Clearly the Law

As common law we have before shown
1 Russell on Crimes 598 = Bucour Abr. 2^d Vol 348, 349.
§ B & Sel 798 - & cases cited Supra = & no case can
be found conflicting with this view except the
§ Mend 586 & the authorities cited in that case
lay down the doctrine diametrically opposite
to that case = But the City Charter does
not authorize any person except conservators of
the Peace created by the Charter to cause an arrest
to be made - City Charter P. 52 Sec 18 = Rule P. ^{9 & 10} ~~10~~
Sec 4 = This is no doubt a casus omnis - But the
authority cannot be implied, nor can the City
Council or the members thereof delegate the power
conferred upon them as conservators of the Peace.
The ordinance only provide for arresting those who are making
a noise or disturbing the peace = using the present tense though
it does not authorize an arrest for a past act but for present
~~The 10th instruction is clearly the law & we are bound to~~
regard the 12th instruction is also law = for
the same reasons as above =

The 13th instruction is clear Law - same
authorities. also the 14th & 15th instructions
are clearly the Law - The ordinances rule
P 180 Sec 8 - Speak in Every instance of arresting
persons who are in the act of doing some
thing in violation ^{thereof} ~~of the Statutes~~ They speak
in the present tense & do not authorize an
arrest without warrant for a past act -

The giving of the 19th instruction for
defendants was erroneous for the same
reason that refusing the above was
erroneous = viz because of the arrest for a
breach of the peace which the Officer did
not witness personally - & because it was
past - the necessity no longer existed -

The admission of the testimony as to what was said by the Crown at the time of the arrest of Brown & Makong.

It would be a hardship if Muir must be arrested & dropped in prison because some one in a crowd said something that tended to frighten one of the officers - It was no part of the gesture -

It is asked "Is the peace of the City to be disturbed by midnight bravels, because the Police Officers did not see the fight" - We reply if the "bravel" is over a warrant may be procured & the parties regularly arrested - and there is no danger of annoying any one if the affray is over; if not over the officers will be apt to see something personally that will authorize an arrest - But if the officer may come after the affray is over & arrest whom he pleases because he suspects some one has been guilty, liberty is held by a very unstable tenure - There ought to be the sanction of an oath that the party has been guilty of an offence before he is arrested - & where an affray is over there is no immediate necessity to grant us to override all other considerations -

Wm H. Higgins &
Arnold Lunnell & Henry

Charles Martin

W }

Orren McCarthy -

Points & authorities

State of Illinois

Supreme Court } p

Charles Main

v.

Owen McCarthy } In error
et al }

Of June Term in the year of
our Lord one thousand eight hundred
and fifty four.

Afterwards to wit on the day of
June A.D. 1854 at this same term of the Court before
the Justices thereof comes the said Charles Main by
Arnold ^{Lange} Day his Attorneys, and says that in the
record and proceedings aforesaid and also in the
 rendition of the judgment aforesaid, there is manifest
error in this Court;

- First. Because the verdict was contrary to evidence
2^d. Because the Court erred in refusing to give instructions
asked for by plaintiff
3^d. Because the Court erred in giving the instructions asked
for by the Defendants.
4th Because the Court erred in admitting evidence under notice
of justification and because Court erred in admitting
other evidence.

There is also error in this Court, that by the record aforesaid
it appears that the judgment aforesaid, in form aforesaid
given was given for the said Owen McCarthy, Jeremiah
O'Connor, Jeremiah Loden and Alfred Johnson whereas
by the laws of the land the said judgment ought to have been
given for the said Charles Main against the said Owen
McCarthy et al. And the said Charles Main prays
that the judgment aforesaid, for the errors aforesaid,
and for other errors apparent in the record and proceedings
aforesaid, may be reversed, annulled and
altogether held for nothing and that he may

be restored to all things which he hath lost by occasion
of the said judgment so

Armed, ~~Landed~~ day
at the on Peff in error.

And said depts join in error.

Foyne must stop
for depts

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Main & E. Carthy's bal.
Euns & Jönder

Fild June 14, 1854,
L. Seland Ch.

73

Charles Elain

as
Owen de Barry et al

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1244

1854