

12558

No. _____

Supreme Court of Illinois

Shallenberger

vs.

Cooper

71641  7

~~107~~ ~~48~~

Charles J. Cooper

17

Margaret Shallenberg

2.4.

12558

1858

Elias S. Cooper } Sup Court of Minn.
 Appellant } Northern Division
 vs }
 Margaret Shallenbeger } Appellate from Court
 Appellee

This was an action of slander
 brought by Appellee against Appellant
 in the Circuit Court -

1st Count ^{of} Declaration, aver the following
 "defamatory words" The Margaret
 Shallenbeger is a damned whore
 and a black bitch (thru meaning
 to impute the act of fornication
 to the said Margaret Shallenbeger)
 in presence of John Shallenbeger
 on or about the 24th day of May 1853

2nd Count ^{aver that} ~~also~~ on or about the 15th June 1854
 in presence of same persons Cooper
 said as follows the Margaret
 Shallenbeger as certain as hell
 has had sexual intercourse with
 David Henderson and if it
 went into Court he could prove it
 and would prove it (thru meaning
 that the said plaintiff was guilty
 of fornication with David Henderson)

Plur. ^{1st} General issue -

2nd That the said plaintiff at the
 said time where the words in said
 1st Count ~~he says that the~~
~~said plaintiff at the said time~~
 spoken at the same place &c
 was a damned whore and a black
 bitch

3rd That at time in 2nd Count
 specified plaintiff as certain

Plaintiff introduced John Shallenberg
who testified to two conversations with
left one on 24th or 25th May 1854 &
one on 15th June 1854 - In first conversation
he said Margaret Shallenberg is a
damned whore & a black Bitch - In the
other conversation he said "Margaret
Shallenberg as certain as hell has had
sexual ~~intimacy~~ connection with
David Henderson and if it went into
court she could prove it and would
prove it" - Levi C. Lane might
have been present at first conversation
was not present at the other -

Cross Examination In second conversation
defendant said "Margaret Shallenberg
as certain as hell has had sexual
connection with David Henderson
and if she prosecuted him he could
prove it" - No one was present - it
was in defendant's office - He is
physician & was his student - Never
heard him say such things to any one
else - we were talking about difficulty
between plff & defendant - On 15th June
left said "Margaret Shallenberg has had
sexual intercourse with David Henderson
as certain as hell & if she prosecuted him
he could & would prove it" plaintiff is
23 years old - is poor - A seamstress &
unmarried & a pauper - Conversation
lasted half of an hour - Can't tell rest
of conversation - defendant committed
conversation -

Plff rested -

as he had had sexual intercourse
with David Henderson and then
others if it went into Court
he said defendant could prove
it and would prove it —

Plaintiff by his applications
put in issue the foregoing plea

The cause was tried at September
Term of Kent Circuit Court 1857 —

~~Plaintiff in last before offered~~
~~was offered in evidence that the~~
The depositions of Levi C. Lane ~~that~~ ^{he} ~~had~~ ^{had} ~~been~~ ^{been} ~~testified~~ ^{testified} in substance I have
known ~~him~~ ^{him} since the middle of 1853
I left ^{Henderson} Kent County in June 1854. Margaret
Shallumberger was a single woman
I am a physician & practiced as such
a obstetrician during the last three years
of my residence in Henderson Kent
County — Margaret Shallumberger was
pregnant while I lived at Henderson
from latter part of Dec 1853 till middle
February 1854 — She called on me in
February 1854 saying she had been impregnated
with a certain man who had been
going to see her, whom I inferred
to be David Henderson as I knew
of no other person who was paying
his attentions to her. She begged for
medicine to cause her to miscarry
as she had rather die than remain
as she was — I gave her medicine —
She called again in a few days & from
symptoms she related I told her she
had commenced a miscarriage — I
examined her vagina & found lying in the

Witnessed in Henderson Kent County
for five years

passage having from the womb externally
a small detached embryo which I drew
forth with my index finger & judge this
to be about six or eight weeks old -
She did not mention the person name
by whom she became pregnant -

When she first came to my office it was
a very stormy day, of her own accord & without
any assignation & she told me she came
without the knowledge of her sister that
she had come to have a little fun & on
my asking her in what way she spent
"her time" accompanying the same
word with lascivious movements
of her body. I told E. S. Cooper two or
three days after the visit of Margaret
concerning the circumstances - I was
told by James Samuel that she visited
his blacksmith shop when he was
there - other things of the kind I heard but
do not know that they were correct -
I was present at a conversation had
between Isaac S. Cooper and John
Shallmeyer on or about the 24th
day of May 1854 at the office I rented
of Cooper & on his premises. Shallmeyer
addressed Cooper very angrily because
Cooper was unwilling that said Margaret
should visit his house - then Cooper
said Margaret was such an infernal
gabbler that he believed she would not
hesitate to slander him - & especially
as she was much under the influence
of Joseph Breuer's family then residing
in Henderson which was unparagonally
to him - He made no other allusion to

Margaret in said conversation then that
she was a great tattler - was also present
at a conversation between Sam. Jentles
on or about 15th Jan 1854 - John Shullb.
commented by accusing Cooper of having
injured his sister Margaret in his
business of painting by having discouraged
persons from employing him - to which
Cooper replied that ~~she was~~, he believed
Margaret to be a most infernal tattler
& under the influence of Joseph Brown
& Joseph Henderson's families both of
whom were most inveterate enemies
of himself & that Margaret had told
a number of lies for the purpose
of slandering him in Henderson's
store & when asked why his sister Margaret
had reported that he (Cooper) had
treated her in a very indecent and
unbecoming manner - Shullb.
replied that he did not believe it
was so & if it were it was to pay him
for having discouraged persons in
the neighborhood from employing him
Cooper then said that Margaret had
reported that he had made overtures
to her & cohabited with her - John
Shullb. replied that he did
not believe she had so reported this -
H. Moore John Shullb. 3 years
was in same office with me about 18
months was my student & seated to me
regularly lessons in medicine
"Interrogatory. State whether you are
acquainted with the general character
of John Shullb. in the neighborhood

serpents & further spread in evidence
~~the~~ testimony of Mrs. C. J. Gay -

Live in Henderson. Margaret Shallenbarger
told me that David Henderson came when
bed & got in & remained an hour at
the house of Joseph Henderson where she
staid all night & seduced her -
plaintiff wrote notes to gentlemen &
signed witnesses name inviting them to
call at witnesses house - she did not
use the word seduced but said when
Henderson got in bed with her he
put his arms around her & she thought
it not wrong because of the affection &
that David Henderson came to her room
frequently at her father's house & she
was afraid they would find it out
that she staid at Hendersons to
please him - that he wanted to marry
her & she was not willing

Jane M. Samuel - knows plff - generally
thought to be loose character - she would
talk & act unbecomingly a woman -
Myron Nelson, Charles Clark & Laura M.
Kushy. testified same manner as to
her imputation for chastity -
Plaintiff had Mrs. Bellser who testified
that she knew plff during January &
February 1854. knew nothing wrong in her
words with him about a month, about
Jan 1854, believe she had her
cousin gave her medicine - don't know
only by her appearance & that she said
about the medicines - heard reports against
her

Wabron Bell - never heard anything against
girl until this difficulty with Cooper
The Cooper party are one way - the other
party the other way - think general
opinion in her character is good -

Mr Scott testified that puffy character was
good outside of the Cooper party -

Lawrence Kelly testified that up to this General
puffy character good -

G. S. Hawkins testified to same thing -

David Henderson, knew puffy from a little
girl - was only once at her father's house,
did not visit her room - was married
at that time - never had sexual intercourse
with her - was never in bed with her -
took me to ride intended no result -

John Duncan - physician - Discharge
is a painful menstrual discharge
produces labor pains sometimes difficult
to distinguish embryo from membrane
Can be done on close inspection - female,
might ride to office & be delivered but
not safe - dangerous to produce abortion
Knows Levi C. Lane - was a man of considerable
skill - might be difficult to tell dismen-
orea from parturition pains - could
tell embryo might stay in vaginal
canal some time after expulsion -
thinks after abortion flowing would come
on in one or two months -

Joseph Henderson - physician attended
puffy from 24th to 30th March puffy
was laboring under painful menstruation.
Menstruation after abortion does not
occur in less than 2 or 3 months

Don't Henderson & myself never stood
at my house to my knowledge - Have
not spoken to defendant for 2 or 3 years
Mr. Brown - partner of Samuel - never
saw Jeff stop at Blacksmith shop
heard nothing against him until after
the fuss

Robert Burtone - plaintiff lived at
Witnemes house - she was sick from
1st to 15th Feb with pains in head &
back. Dr. Cam to see her said she
had dismenoria - Dr. Cam Dr. Jeff
Monday morning went into her bed
room & tried to get into bed with
her & there was a fuss about it -
She was not confined more than 2 or
3 days - Don't know of her getting in
buggy while she remains for two
months after - Don't know anything
about the fuss & his getting in bed
with her except what plaintiff
told me

Mr. Brewster was at Masonic Lodge Chas
Clark & George Wright testified as to
what took place at Masonic Lodge

The Court gave the following instructions for plaintiff below -

That if they believe from the evidence that the defendant spoke the words charged in the declaration as therein alleged they should find for plaintiff unless the defendant has proved the truth of the pleas of justification by him pleaded and that to sustain those pleas the defendant is required to make the same proof that would be required in a criminal prosecution for the offence in said pleas mentioned that the jury may give such weight to the evidence introduced on the trial as they may think it entitled to under all the circumstances of the case proved before them - That the danger in case of this kind are in the discretion of the jury - The words charged in the plaintiff's declaration imply malice and if proved the malice of the speaker in law is implied -

To the giving of which ~~exceptions~~ instructions defendant excepted

Defendant offered the agreed the Court to instruct the jury as follows
"The charge that the plaintiff had sexual connexion with David Henderson may be proved by circumstances that raise the presumption of such connexion"
Which instruction as asked was refused by the Court, & the Court added that it was beyond a reasonable doubt & gave

the instructions as amended, & the refusal of said Court to give the instruction as asked & other amendments thereof by the Court the defendant there & then excepted -

The jury brought in a verdict ~~for~~ ~~the~~ ~~plaintiff~~ ~~of~~ ~~500~~ - upon the coming in of which defendant moved the Court for the arrest of judgment in the Cause & for a new trial for the following reasons -

- 1 The giving of improper instructions on the part of & a & the refusal of the plaintiff
- 2 The refusal of the Court to give the instruction asked by the defendant
- 3 The modifying or alteration by the Court of the instructions asked by the defendant and the ~~giving~~ giving of the same or modified or altered -
- 4 The verdict is against law & the Evidence
- 5 The want of a sufficient declaration
- 6 The want of a sufficient verdict by the jury
- 7 The jury by their verdict did not find the issues joined herein for the plaintiff
- 8 The jury by their verdict did not find the issues joined in this suit against the defendant -

Which Motions were overruled by the Court - & which decision of the Court in overruling such Motion the defendant excepted -

As follows - "The jury find for the plaintiff the sum of five hundred dollars"

Assignment of errors

- 1 The Court below erred in giving the several instructions to the Jury on the part of the plaintiff below
- 2 The Court Erred in refusing that the instruction of defendant below
- 3 The court Erred in modifying & altering the said 8th instruction of defendant -
- 4 The Court Erred in rendering judgment against appellant & in favor of appellee upon the verdicts of the Jury as rendered
- 5 The Court Erred in refusing to grant a new trial -

J. Manning Munroe
Atty for Appellant

44
Cooper vs Shallenbarger
Abstract

Filed June 24, 1856
L. Leland
Clerk

32
500
1600

Manuscript of *Decisions*
And
Judgment in the Case of

Mary Shallenberger
vs.
Elias S. Cooper

}

Case

Transcript of
Proceedings and Judgment had in the Case of;
Margaret Shellenberger }
vs. } Given to Supreme Court on
Esaias S. Cooper } Bill of Exceptions.

Declaration filed herein September 4th 1854 as follows:

State of Illinois }
County of Knox } Knox County Circuit Court Sept. Term. A.D. 1854.

Esaias S. Cooper was summoned to answer Margaret Shellenberger the Plaintiff in this suit in a plea of Trespass on the case and therefore the said Plaintiff by her Attorneys Complains &c.

For that whereas the said Margaret Shellenberger now is a good, true, honest, just, virtuous, unmarried woman and as such has always behaved and conducted herself and until the committing of the said several grievances by the said defendant as hereinafter mentioned was always reputed and esteemed by her neighbors and all other good and worthy citizens of this State to whom she was in anywise known to be a person of good name, fame and credit to wit, at the County of Knox aforesaid and whereas also the said Margaret Shellenberger hath not ever been guilty or until the time of the speaking and publishing of the several false, malicious, scandalous and defamatory words by the defendant as hereinafter mentioned been suspected to have been guilty of Fornication or any other crime, misdemeanor or impropriety as hereinafter stated, to have been imputed to her by the said defendant,

By means whereof the said Margaret Shellenberger before the committing of the said several grievances by the said defendant as hereinafter mentioned has deservedly obtained the good opinion and credit of all her neighbors and other good and worthy citizens of this State to whom she was in

any way known to wit at the County of Kane aforesaid.

Yet the said Defendant well knowing the premises but greatly enjoying the happy state and condition of the said Margaret Shellenbeger and contriving and wickedly and maliciously intending to injure the said Margaret Shellenbeger in her good name, fame and credit and to bring her into public scandal, infamy and disgrace with and amongst all her neighbors and acquaintances and other good and worthy citizens of this State and to cause it to be believed by those neighbors and citizens that she the said Margaret Shellenbeger had been guilty of fornication as hereinafter stated to have been charged upon and imputed to the said Margaret and to subject her to the disgrace inflicted and awarded upon persons guilty thereof, and to vex, harass, impoverish and ruin the said Margaret in her Character and good name, heretofore to wit on or about the Twentieth (20) day of May, A.D. 1854 at the County aforesaid in a certain discourse which the aforesaid defendant Elias S. Cooper then and there had of and concerning the said Margaret Shellenbeger in the presence and hearing of John Shellenbeger and in the presence and hearing of divers other good and worthy citizens in the presence and hearing of the last mentioned citizen falsely and maliciously spoke and published of and concerning the said Margaret Shellenbeger the false, scandalous, malicious and defamatory words following that is to say, she Margaret Shellenbeger is a Damned whore and a black bitch (thrice meaning to impute the act of fornication to the said Margaret Shellenbeger).

And whereas also afterwards to wit, on or about the fifteenth (15) day of June and year aforesaid at the County of Kane aforesaid and State of Illinois in a certain other discourse which the said defendant Elias S. Cooper then and there had of and concerning the said Margaret Shellenbeger in the presence and hearing of John Shellenbeger and in the presence

And hearing of divers other good and worthy citizens of the State of Illinois
the said defendant further continuing and intending as aforesaid then
and then in the presence and hearing of the said last mentioned citizen
falsely and maliciously spoke and published of of and concerning the
said Margaret Shellenbeger the false, scandalous, malicious and defamatory
words following to wit, that is to say She Margaret Shellenbeger ascertain
as Hell has had sexual connection with David Henderson and if it
went into Court he could prove it and would prove it (thereby meaning
that the said Plaintiff Margaret was guilty of fornication with David
Henderson). By means of the committing of which several grievances
by the said defendant the said Margaret Shellenbeger hath been and is
greatly injured in her said good name, fame and credit and brought into
public scandal, infamy and disgrace with and amongst all her
neighbors and acquaintances and other good and worthy citizens of
this State to whom the innocence and integrity of the said Margaret Shellenbeger
were unknown inasmuch that divers of said neighbors and citizens on
account of the speaking and publishing of the said several false, scan-
dalous and defamatory words aforesaid by the said defendant as
aforesaid from thence hitherto suspected and believed and still do
suspect and believe that the said Margaret Shellenbeger has been guilty
of fornication so as aforesaid charged and imputed to her by the said
Defendant and have by reason of the committing of said several grievances
by the said defendant as aforesaid from thence hitherto wholly refused
and still do refuse to have transaction, acquaintance or discourse with
the said Margaret Shellenbeger as they were before accustomed to have
and otherwise would have had. And also otherwise the said Margaret Shellenbeger
by means of the premises was much injured and damaged to wit at the
County aforesaid, to the damage of said Plaintiff of five thousand dollars and therefore she
Sues &c.

Keightley - Kellogg & Greig
Attys. for Plaintiff.

Copy of Summons.

State of Illinois }
Kane County } ss.

The People of the State of Illinois,
To the Sheriff of Kane County Greeting.

We command you to summon Elias S. Cooper if he may be found in your County to appear before the Circuit Court of said County of Kane as the next Term thereof to be holden at Court House in Knoxville on the Third Monday in the Month of September next to answer unto Margaret Schellenberger in a Plea of Trespass on the case to the damage of the Plaintiff of Five Thousand dollars and make return of this writ, with an endorsement of the time and manner of serving the same or before the first day of the Term of said Court to be held as aforesaid. Witness Hiram T. Macy Clerk of our said Court



and the seal thereof at Knoxville this 4th day of September A.D. 1854

Hiram T. Macy, Clerk.

I have served the within Summons by Reading the same to Elias S. Cooper this 7th day of September A.D. 1854.

John. Cads. Shff. of Kane.

By Peter Barrett. Dftly.

State of Illinois Kane Circuit Court, April Term A.D. 1855
Monday, April 23^d 1855.

State of Illinois }
Kane County } sc.

Pleas before the Honorable Hezekiah M. Mead Judge of the Sixth Judicial Circuit in the said State of Illinois at a Circuit Court began and held at the Court House in Knoxville in said County on the Fourth Monday in the Month of April said Monday being the Twenty third day of said Month in the year of our Lord One Thousand Eight Hundred and fifty five (A.D. 1855)

Present - The Honorable Hezekiah M. Mead, Judge,
Goudy States Attorney,
Cornelius Runkle Sheriff,
Hiram T. Macy, Clerk.

Monday April 23^d 1855

Margaret Shallenbeger

vs.

Esaias S. Cooper

} Case.

This day came the said Defendant and files his Affidavit and thereupon enters his motion for a rule on the said Plaintiff to file security for costs. Which motion is overruled by the Court and on motion of the said Plaintiff by their Attorney leave is granted the said Plaintiff to prosecute this suit as a poor person.

Thursday April 26th 1855.

Margaret Shallenbeger

vs.

Esaias S. Cooper

} Case.

This day came the said Plaintiff and enters & files his affidavit and thereupon by his Attorney enters his motion for the continuance of this cause to the next Term of this Court. Thereupon, it is ordered by the Court that this suit be continued to the next Term of this Court at the cost of the said Defendant. It is then considered by the Court that the said Plaintiff recover of the said Defendant her costs about this suit at this term of this Court expended and may have execution therefor.

Thereupon upon the same day came said Defendant by his Attorneys and enters and files his demurer as follows.

State of Illinois

Wine County

} ss. Runo Circuit Court, April Term A.D. 1855.

Margaret Shallenbeger,

vs.

Esaias S. Cooper

} And now comes the said defendant & exhibits to the Court the following causes of demurrer to each count in the Plaintiffs declaration contained & to the whole of said declaration - 1st The words charged in said

Declaration as charged are not actionable - 2nd Unimportant
words are coupled with the words charged as slanderous - 3rd The
said declaration does not show any cause of action, & that the
said declaration & each count therein are in other respects informal
uncertain & insufficient & this the Defendant is ready to verify, wherefore
he prays judgment of said declaration & each count therein of the
Plaintiff ought to have or maintain her action thereof against him,
Douglas & Goudy, for Deft.

Plffs. Louis in Denial.

Kellogg, for Plff.

State of Illinois

Knox County

} Pleas before the Honorable John S. Thompson
Judge of the South Judicial Circuit in the State of Illinois
at a Court begun and held at the Court^{House} in Knoxville on the
fourth Monday of September in the year of our Lord one thousand
Eight hundred and fifty five.

Present

Hon. John S. Thompson Judge.

James H. Stewart, Prosec. Atty. Gen. term.

Amos J. Macy, Clerk.

Cornelius Pimble Sheriff.

Whereupon on the 26th of September A.D. 1855 came said Defendant
by his Attorneys and enters and files his Pleas N^o. 1, 2 & 3 as follows:
State of Illinois } Knox Circuit Court September Term A.D. 1855.
Knox County }

Esau's, S. Cooper

att.

} I appear on the case.

Margaret Shellenbeger

} And the said Defendant comes and says he is
not guilty of the said several supposed grievances above
laid to his charge nor of any or either of them in manner and

form as the same are above in said declaration laid to his charge
and of this he puts himself upon the country &c.
and plff. doth like.

Manning & Douglass

Kellogg & Craig for plff.

Attys. for deft.

And for further plea in this behalf the said defendant says
actio non; as to the first count because he says that the said Plaintiff
at the said time when the said words in said first count specified
were spoken, at the same place where said words were spoken was addressed
"whore and a black bitch" and this he is ready to verify, wherefore he prays
Judgment.

Manning & Douglass, for deft.

And for further plea in this behalf the said defendant says actio non
as to said second count because he says that at the said time when said
words were spoken at the same place where said words were spoken the
said Plaintiff as certain as Hell had had sexual connexion with David
Anderson and then and there if it went into court he said defendant
could prove it and would prove it and this the said defendant is ready to
verify, wherefore he prays judgment &c.

Manning & Douglass, for Deft.

And afterwards to wit on the 26th day of September 1855 came said
Plaintiff by her Attorney and entered files her Replication to Defendants 2^d &
3^d Pleas as follows.

Mayaust. Schellenberger

vs.

Know Circuit Court Sept. Term 1855.

Elias S. Cooper

And the Plaintiff for replication to the second plea
of the defendant above pleaded says precludi non because
she says that the Plaintiff was not a "damned whore and black bitch"
as there alleged and this she prays may be enquired of by the country
and Defendant doth the like.

Kellogg & Craig

Manning & Douglass for deft.

And for Replication to the third plea of the Defendant above pleaded
says precludi non because she says that the said Plaintiff did not have
sexual connexion with David Henderson as there in alleged & pleaded
and this she prays may be enquired of by the County,

And Defendant doth the like

Manning & Douglass for def^t

Kellogg & Craig

for Pl^{ff}.

Saturday September 29th 1855

Margaret Shellenbeger
vs.
Esaias S. Cooper } Case.

This day came the parties and their Attornies
and issue being joined for trial put themselves upon the County, there-
upon came a jury to wit: William King, Josiah Nelson, Isaac Hiner,
G. W. Haskell, Abel Thomas, W. H. Hubbell, Thomas Mount, W^m J. Butler,
J. W. Hiner, A. Soubergan, William Cox and James M. Crane who
being duly sworn after hearing the evidence and argument of counsel
retired to consider of their verdict.

Deposition of Levi C. Lane Read in evidence in said cause
which is as follows.

State of New York }
City & County of New York } ss. The deposition Levi C. Lane taken before me the
undersigned a commissioner appointed by the Governor of the State
of Illinois to take depositions &c to be used in said State and resident in the
City of New York, at my office in said State on the sixth day of August A.D.
1855 in pursuance of and under & by virtue of a commission issued out
of the Circuit Court in and for the County of Kane and State of Illinois
and hereto attached and to be read in evidence in a certain cause now
pending and undetermined in said Court wherein Margaret Shellenbeger

is Plaintiff and Esaiás S. Cooper is defendant.

The said Levi C. Lane being first duly sworn to testify the truth, the whole truth and nothing but the truth in regard to the matter in controversy between the said parties so far as he should be interrogated in relation thereto in answer to following interrogatories, testifies as follows,

Interrogatory First. Do you know Margaret Schellenberger plaintiff & Esaiás S. Cooper the defendant in this suit if yea, how long have you known either or both of said parties?

Answer. I have known Esaiás S. Cooper twenty years about; I have known Margaret Schellenberger since the middle of the year 1853.

Interrogatory Second. State how long you resided in the Town of Henderson County of Kane & State of Illinois & at what date you left there.

Answer. I resided in Henderson near five years. I left there on the 23rd day of June 1854.

Interrogatory Third. State whether the said Margaret Schellenberger was a married or single woman?

Answer. She was a single woman.

Interrogatory Fourth. State whether you are a Physician and if yea whether you practised as such in the town of Henderson?

Answer. I am a Physician and practised as such and obstetrician during the last three years and a half of my residence there.

Interrogatory Fifth. State whether the said Margaret Schellenberger was pregnant while you lived in Henderson and if so at what time was she pregnant?

Answer. Margaret Schellenberger was pregnant while I lived at Henderson from the latter part of December 1853 until about the middle of February 1854.

Interrogatory Sixth. State whether you had a conversation with said Margaret Schellenberger about her being pregnant and if you say you had, State when

the conversation was & what was said by her. State fully and if she said by whom she was pregnant. State what person?

Answer. I had a conversation with Margaret Shallenbeger concerning her pregnancy between the first and the middle of February 1854. When she came to my office in Henderson was attended by any one. Margaret Shallenbeger commenced the conversation by saying that she was not very well and that she had been very anxious to see me for some time in reference to her case. I then inquired of her relative to her indisposition, when she told me that she had not been regular in her monthly courses for some time. She manifested considerable anxiety. I then told her that this was a case of not infrequent occurrence in persons of her sex, that she need have no apprehension in regard to the case and that there were certain remedies upon which she might rely as certain to procure relief, but that as this irregularity depended upon so many causes I told her I should be under the necessity of inquiring further in reference to her case before I could prescribe with certainty. She for some time endeavored to naive a direct answer but finally said she supposed she would have to tell me that she had been independent with a certain man. I then inquired who knowing with whom she had been too intimate, which she at first declined telling but finally said it was a man who had been going to see her whom I inferred to be one David Henderson as I knew of no other person who was paying his attentions to her at that time. She then begged of me to give her some medicine to make her miscarry, saying she would rather die, than remain as she then was. Upon which I prescribed her an inert medicine for the purpose of allaying her fears. After obtaining from me a promise that I would tell no one and also saying that she had sought this opportunity to see me, that no one might know it and that she would call soon and tell me how she got along. She left the office. A few days after this said Margaret Shallenbeger called at my office in Henderson alone, riding in a buggy from which I

assisted her into the office when she told me that she felt very badly had great pains in the small of her back and in the lower part of her belly and had commenced to flow. She moreover told me that bearing my medicine would not have the desired effect she had one evening jumped from the top of a fence to the ground; and besides had taken large doses of turpentine she having heard women say that these were good to make themselves throw upon things. I then told her that she had commenced to miscarry and that I should be under the necessity of making an examination to determine if this were not the case. To this she at first made objection but upon my telling her it would be utterly impossible for me to treat her case with certainty without she consented. Having then locked the office door, while she occupying a semi-erect posture, I examined her per vaginam and found lying in the passage leading from the womb externally, a small detached embryo which I drew forth with my index finger and judge the same to be about six or eight weeks of age. After giving her a prescription to allay her pains, she left the office. Her brother-in-law Robert Burton about this time once asked me what was the matter with Margaret Shallenbeger when I told him her symptoms might perhaps have arisen from her having swallowed some paint. As she was then engaged in painting window curtains and advised him to persuade her to quit the business. She did not mention the person's name by whom she had become pregnant. My opinion was that the aforesaid David Henderson was the person, for the reasons above stated that he was the only one who was going to visit her.

Interrogatory Seventh. — If you of any acts of loose conduct on the part of said Margaret Shallenbeger with any man or men, state same fully.

Answer. — Margaret came to my office about three weeks previous to her applying to me for medicine for effecting miscarriage upon one of the most stormy days I ever saw in Illinois alone, of her own accord, without any assignation

or solicitation on my part and as she told me without the knowledge of Mr Burton, her sister. Soon after arriving she told me that she had come to have a little private fun and on my asking her in what way she replied "you know" accompanying the same words with lascivious movements of her body. I told E. S. Cooper two or three days after this visit of Margaret concerning the circumstances.

Interrogatory Eighth. If you know of said Margaret Shallenberger having conversation with any men, how many men and about what time and how many times?

Answer. I was told by James Samuels that she once visited his blacksmith shop in Henderson, when he was there - other things of the kind. I heard but I do not know that they were correct.

Interrogatory Ninth. State whether you were present at a conversation between Sarah S. Cooper the defendant and one John Shallenberger who is brother of said Margaret on or about the 24th day of May A.D. 1854 concerning said Margaret. If you answer yes, state where it took place and what was said by said Cooper about said Margaret; state fully and the exact words and all the words used by said Cooper at said conversation?

Answer. I was present at a conversation held between Sarah S. Cooper and John Shallenberger on or about the 24th of May A.D. 1854 at the office which I had rented of said Cooper and which is on said Cooper's premises concerning Margaret, sister of said John Shallenberger, when said John Shallenberger addressed S. S. Cooper in a very angry manner because said Cooper was unwilling that said Margaret should frequent his house; when said Cooper stated as a reason, that she said Margaret was such an infernal gabbler, that he believed she would not hesitate to slander him and especially as she was much under the influence of a Joseph Brewer's family then residing in Henderson and which was unfriendly to said Sarah S. Cooper. During this conversation said Cooper made no other allusion to said Margaret than that she was a great tattler.

Interrogatory Tenth. Have you stated in answer to the last interrogatory all that was said by said Cooper concerning said Margaret, if not, state fully in answer to this?

Answer. I have, and remember well that nothing was said respecting Margaret by Cooper other than that she was a dangerous tattler.

Interrogatory Eleventh. State whether you were present at a conversation between Isaiah S. Cooper the defendant and one John Shallenberger brother of said Margaret Shallenberger on or about the 15th day of June A. D. 1854 concerning the said Margaret. If you answer yes, state where it took place and what was said by said Cooper about said Margaret. State fully & the exact words and all the words used by said Cooper at said conversation?

Answer. I was present at said conversation on or about the 15th day of June 1854. The conversation began as E. S. Cooper, John Shallenberger and myself were walking to the office which I had rented of said E. S. Cooper and is on said Cooper's premises and continued some time after we three had arrived at said office. John Shallenberger commenced by accusing E. S. Cooper of having injured his sister Margaret in her business as a curtain painter in the village of Henderson by having discouraged persons from employing her to which E. S. Cooper replied that he believed Margaret Shallenberger to be a most infernal tattler and that under the influence of Joseph Baucus and Joseph Henderson's families (particularly the former) both of whom were most insatiable enemies of himself (E. S. Cooper) and that the said Margaret had told a number of lies for the purpose of slandering him in the village of Henderson and E. S. Cooper asked John Shallenberger why his sister Margaret had reported that he, E. S. Cooper had treated her in a very indecent and unbecoming manner once when he E. S. Cooper was called to visit said Margaret in the family of Robert Burton in the town of Henderson. John Shallenberger said he did not believe his sister had ever reported these things about E. S. Cooper but that if she had it was

to pray him E. S. Cooper for having discouraged persons in the neighborhood from employing said Margaret as a pianist. E. S. Cooper then told John Shallenberger that she, Margaret had reported that he, Cooper, had made overtures to said Margaret to cohabit with her. John Shallenberger said he did not believe his sister Margaret had ever reported this, as he had never heard of it before. E. S. Cooper, then said, he had never made any such advances or ever thought of it towards Margaret Shallenberger and that as far as her looks went, she was certainly the last woman of whom a man would ever think of such a thing. I then told John Shallenberger his sister Margaret was taking a very improper course in reporting such a thing and that admitting the thing to be true, she, Margaret, must suffer as much as the one she thought to injure and that such a course would prove ruinous to her character and detrimental to his John Shallenberger's and advised him to see her immediately and tell her so. John Shallenberger then left the Office and I think called but once or twice after at which time nothing of importance was said. I may state that about one month previous to the last conversation I had spoken with E. S. Cooper about the propriety of my discharging John Shallenberger inasmuch as he was such an inferior student, that I thought he would never reflect any credit on me as his preceptor, for as respects intellectual capacity he had shown himself to be a mere cypher and I told E. S. Cooper that I believed he would fabricate stories or torture that which we might say respecting Margaret so as to be construed as slander and report the same to our enemies particularly one Joseph Henderson, towards whom he, John Shallenberger began to evince a partiality contrary to what he had always before manifested. Upon further thought however I decided to retain him as his time would soon be out; but at the same time Cooper and myself entered in a firm pact and agreement that in his, John Shallenberger's presence we should ever use the strictest caution in our language to say nothing of which he could ever take advantage and

this agreement was ever after strictly adhered to in conversing in the presence of John Shallenberger for the reasons before assigned.

Interrogatory Twelfth. Have you answered the last interrogatory fully? if not do so?

Answer. I have.

Interrogatory Thirteenth. How long have you known said John Shallenberger brother of said Margaret. State how long he was in the office with you and state whose student he was, if anybody's?

Answer. I have known John Shallenberger over three years. He was in the same office with me about eighteen months. John Shallenberger was absent at St. Louis Missouri during the months of November and December 1853 and January & February 1854 during the latter part of which his sister was pregnant and applied to me for medicine to effect a miscarriage. He was my student and recited to me regularly lessons in medicine. I never heard him recite a lesson to E. S. Cooper. I do not think he ever did.

Interrogatory Fourteenth. State whether you are acquainted with the general character of John Shallenberger in the neighborhood where he lived for truth and veracity. If you answer yea, state whether it was good or bad?

Answer. I was acquainted with the character of John Shallenberger in the neighborhood where he lived, for truth and veracity. For the first year he staid with me it was tolerably good, during which time he did not mingle in society and was scarcely known, but the last three months his course was entirely influenced by his own interests to wit regardless of truth and honor.

Interrogatory Fifteenth. State whether you were acquainted with the general character of Margaret Shallenberger in the neighborhood where she lived, and if you answer yea, state whether that character was good or bad?

Answer. I was. The most of men who spoke of Margaret Shallenberger spoke of her as a girl of loose habits and easy virtue. It being told me several times that she and one David Henderson were caught in a fying together and those

women who spoke of her illness while I treated her, asked me, if it was not from miscarriage.

Interrogatory Sixteenth. State whether said Margaret Shallenbeger applied to you for medicine to produce an abortion upon herself, if you say yes, state where it was & where you resided at the time?

Answer. She did and in the time, place and in the manner as set forth in answer to the sixth interrogatory.

Levi C. Lane.

Cross Interrogatories.

Cross Interrogatory First. State your means of knowledge of the facts by you stated in each of the answers by you above given and whether you know of the facts personally or by information from others and if informed by others state by whom as to each answer?

Answer. The answers to all the foregoing interrogatories direct are stated of my own knowledge, except when on information I have stated my informant. In reference to the fifteenth interrogatory, what is stated was the opinion of most of the acquaintances of Margaret Shallenbeger who spoke to me of her.

Cross Interrogatory Second. If you state said Margaret was pregnant while you resided at Henderson, state how you knew and how long she had been pregnant when the fact of her pregnancy came to your knowledge?

Answer. The answer to this Cross Interrogatory has been fully set forth in the reply to the sixth direct interrogatory.

Cross Interrogatory Third. Are you a judge of the acts that constitute loose conduct on the part of an unmarried woman? State what acts you saw in said Margaret that prove to your mind misconduct in her?

Answer. I am. The reply to this question is contained in my answers to the sixth and seventh direct interrogatories. The conduct referred to there on the part of Margaret I consider loose and improper.

Cross Interrogatory fourth - Did you in the presence of any person hear Esaias, S. Cooper call said Margaret a dam whore in either of the conversations referred to in interrogatories ninth and eleventh? Did you ever hear the said Esaias, S. Cooper say the said Margaret had sexual conversation with any person in either of the conversations referred to in interrogatories ninth and eleventh?

Answer - I did not.

Cross Interrogatory fifth - How do you know whether the character of the said Margaret was good or bad in the neighborhood where she lived? State the means of your knowledge?

Answer - Answered in the seventh and fifteenth direct interrogatories.

Levi C. Lane.

State of New York } ss.

City & County of New York } I, John Livingston a Commissioner duly appointed by the Governor of the State of Illinois to take the acknowledgment of deeds to be used in said State and resident in said City and State of New York do hereby certify that the foregoing deposition of Levi C. Lane was taken before me in the City of New York and State of New York on the sixth day of August A.D. 1855, that the same was reduced to writing and sworn to before me and signed by the said Levi C. Lane in my presence at the time and place last aforesaid.

Given under my hand and seal this sixth day of August A.D. 1855.



John Livingston,

Commissioner for Illinois in New York.

Plaintiff's Instructions, as given by the Court.

The Court is asked to instruct the jury that if they believe from the evidence that the Defendant spoke the words charged in Plff's declaration as therein alleged - they should find for the plaintiff - unless the defendant has proved the truth of the pleas of justification by him herein pleaded.

and that to sustain those pleas the defendant is required to make the same proof that would be required on a criminal prosecution for the offence in said pleas mentioned.

That the jury may give such weight to the evidence introduced on the trial as they may think it entitled to under all the circumstances of the case proved before them.

That the damages in case of this Plea are in the discretion of the jury. The words charged in the plaintiffs declaration imply malice and if proved the malice of the speaker is in law implied.

Defendants Instructions as given by the Court.

1. The Plaintiff is bound to prove the charge contained in the declaration substantially or she is not entitled to recover at all in this action.
2. To prove the charge substantially the Plaintiff must prove that the defendant spoke so many of the words mentioned in the declaration as amounts to the substance of all the words mentioned in the declaration.
3. If in speaking the words mentioned in the declaration the defendant used words qualifying the words mentioned in the declaration in such manner as to show that he did not impute the offence of furnication then the defendant could not be found guilty under the declaration in this cause.
4. If it was proved by the sole witness who testified to the speaking of the words mentioned in the declaration that at the same time the defendant used other words in regard to the same matter and the jury believe that those words materially qualified those words proved to have been spoken in reference to said charge then the Plaintiff could not recover on such proof.
5. The credibility of all the witnesses is a question to be determined by the Jury.

6. Although the jury believe that the words mentioned in the declaration were spoken by the defendant, yet if the jury further believe that the defendant has substantially proved his pleas of justification they should find for the Defendant.
7. The charge that the Plaintiff is "a damned whore" is substantially proved by proving that she was a whore.
8. The charge that the Plaintiff had sexual commerce with David Henderson may be proved by circumstances that raise the presumption of such commerce beyond a reasonable doubt.
9. If the jury believe from the evidence that the Plaintiff told in effect that she had had sexual commerce with said Henderson, then although the Defendant repeated the report which said Plaintiff had so put in circulation it would not be slander.
10. Although the Plaintiff has proved the words as charged and the defendant has not proved his justification still the jury must only find such damages, as the injury to such a character as the plaintiff is proved to have had, amounts to in the estimation of the jury.

September 29th 1856.

Margaret Shallenberger

vs.

Case.

Erasmus S. Cooper.

This day again came the jury and upon their oath do say "We the jury find the issues for the Plaintiff and assess her damage at the sum of Five Hundred dollars" thereupon came the defendant by his counsel and entered his motion for an arrest of judgment and for a new trial herein.

Tuesday Oct 2nd 1856.

Margaret Shallenberger

vs.

Case.

Erasmus S. Cooper

This day again came on this cause for hearing on the motion made herein heretofore for an arrest

of judgment and for a new Trial, after hearing the argument of counsel there
on it is ordered by the Court that the motions be overruled, therefore it is
considered by the Court that the Plaintiff have and recover of the said
defendant the sum of five hundred dollars, the amount found by the
jury therein, together with her costs by her in this suit expended and may
have execution therefor. Thereupon on motion it is ordered by the Court that
the said defendant have ninety days in which to file his bill of exceptions
and it is further ordered by the Court that the defendant have ninety days
in which to file his appeal Bond in the penal sum of \$1000 to be approved
by the Clerk.

Bill of Exceptions filed Nov^r 5th 1835,

State of Illinois } ss. Knox Circuit Court September Term, 1835.
Knox County }

Margaret Shallenberger }

vs. }

Esaias S. Cooper }

Be it remembered that at the September Term
of the Knox Circuit Court came on to be tried this cause
before this Court & a jury upon the issues found therein, that the
declaration filed herein reads as follows (here inserted) & that the pleas
of the defendant filed herein read as follows (here inserted) and that the
replications of the Plaintiff to the defendant's pleas read as follows (here
inserted) & issue being taken on said replications a jury was called, selected
and sworn in due form of law to try the issue so joined between the parties.
And the Plaintiff to maintain the issue on his part called John
Shallenberger as a witness who being duly sworn, testified as follows:
Knew the parties to suit - was the brother of Plaintiff - had.

conversations with defendant in defendant's office in Henderson in Kinn
County Illinois - the first time on the 24th or 25th of May 1854 the other
time on the 15th of June 1854. First conversation he said "Margaret
Shallenberger is a damned whore & a Black Bitch". Levi Coleman might
have been present at this conversation, at the other he was not present
at the other conversation the defendant said "Margaret Shallenberger as
certain as Hell has had sexual connection with David Henderson and
if ^{it went into court} ~~she~~ ^{he} prosecuted him she could prove it and would prove it." Cross examined
testifies as follows at second conversation defendant said "certain as Hell
Margaret Shallenberger had had sexual connection with David Henderson and if
she prosecuted him he could prove it." he was in earnest - no one was present - it was in
defendant's office - He is a Physician & I was his student at time of conversations - had
no difficulty with defendant at that time - have nothing against him in particular
- never heard the defendant say such things to any one else - we were talking about a
difficulty between the defendant & Plaintiff at time of these conversations, & have not
seen the words written down but once since I handed them in which was about
nearly since - have seen them to-day - at these conversations we were talking about the
Plaintiff my sister I did not ask him what was the matter with my sister. I asked
him that question once & he said she was labouring under dismenoree, & he talked
with him about my sister having abortion produced upon her - under spirit 3rd
June "Margaret Shallenberger had had sexual connection with David Henderson as
certain as Hell & if she prosecuted him he could & would prove it." Plaintiff is 23
years old is poor & seamstress & unmarried & painter - Conversation lasted some
half hour, can't tell rest of conversation, I left commenced conversation, Iff was
called to see Plaintiff & had difficulty in bedrooms,

Whereupon the Plaintiff veto his case & the defendant to maintain the issue on his
part introduced in evidence the depositions & witnesses who testified as follows.

The deposition Levi L. Lane which read as follows (enclosure inserted herein).

Wm. C. D. Gay - being sworn testified as follows, Is acquainted with Plaintiff, Eliza Henderson & said that Margaret Shallenbarger told her that David Henderson came to her bed & got in and remained an hour at the house of Joseph Henderson where she staid all night & seduced her. The Plaintiff commenced the conversation & examined said Plaintiff in & out notes to Gentlemen & signed witnesses name to them waiting them to call at witnesses house. Never had any particular difficulty with Plaintiff. I concluded, from what she said, that she & David Henderson had connexion. Plaintiff did not use the word seduced but she admitted that she signed witnesses name to notes she said when Henderson got into bed with her he put his arms around her & she thought it not wrong because of the affection, and that David Henderson came to her room frequently at her Father's House & she was afraid they would find it out & that she staid at Henderson to please him & that he wanted to marry her & she not willing & said that he went to ride with her & insulted her.

James M. Samuels, sworn said. Is acquainted with Plaintiff at Henderson when she first came there her character was good, after she came there heard her spoken of as a tatter & generally thought to be a loose character. She has frequently called at my shop door and been more friendly than women generally are. she would act unbecomingly a woman. spoke to me of Mitt gals, gals of loose character, twitted me of gals of loose character. Had frequently been at my house before this time - in passing by the shop door she would sometimes call in & sometimes at the shop door at my house asked her about Joseph Henderson, she told about Joseph Henderson studying 2 or 3 months & got a girl with young one run off. Heard people say believed the Plaintiff would have connexion. Another said he believed he could crack her for a quarter - my shop on public street in Henderson. She the Plaintiff said at said conversation that Joseph Henderson got into difficulty with a girl and run away after studying two or three months, don't know as she said got a girl with young one.

Myron Nelson witness for Defendant sworn - said knew the Plaintiff's character, her reputation was one of the low class, is said to take things that don't belong to her. Majority say so, this is as to chastity, don't know as to particular acts. W^m E. Roberts has spoken of her. E. Y. Elliott has also spoken of the report, just heard the talk a year ago last winter, heard no bad reports till after this suit. Never heard Cooper or Lane say anything about it. I was on that a note was sent to by Pltff inviting me to call at Mrs. L. Gays, the name of Mrs Gays the Pltffs were signed to the note - the note was an invitation to call & a check was printed in the note I was in the habit of calling at Mrs. Gays occasionally. One of the notes referred to in Mrs Gays Evidence.

Charles Clark - Know character of Plaintiff. Good many think her reputation not good for chastity - loose character. These reports arose about a year after she came to Henderson good many spoke of this after the fuss, after the difficulty her character was camoured, it was general opinion her character not good.

Laura W. Hasley - sworn for Defendant - stated. Know character of Plaintiff, good many think her reputation not good - general impression is, she is not what she ought to be. heard it in the Fall of 1854. Don't know any particular acts. Knows no particular acts, heard them over year before the reports came out - reputation that she was not virtuous - Talk was not about this suit she said she had slandered defendant & witness thought she had been under bad influences, those who are right say defendant has been slandered.

J. M. Witt sworn for defendant said. Is acquainted with Plaintiff - don't know her character have heard some speak well in the trouble, difficulty was her charge against Cooper seemed to be a difference of opinion. All the talk has been in relation to this matter. Some thought Plaintiff to blame others not. It commenced one year ago last May or June.

Charles P. West sworn for Defendant. testified is not acquainted with Plaintiff, don't know much about her reputation heard some talk.

M^{rs} Bell. sworn for Plaintiff testified that she knew Plaintiff, knew her year ago last January knew her during January & February 1854. Plaintiff lived at Burton's - was well acquainted with her. Knew nothing wrong in her - was with her about one month after about the first of January 1854 was with her from her appearance & believe she had her courses. I gave her medicine &

heard reports against her, there were some reports. I saw nothing wrong in her, Don't know about the menses only by what she told me except her appearance,

Malron Bell sworn for Plaintiff testified - he moved to Henderson fall of 1853 left in one year. Never heard anything against the girl until this difficulty with Cooper. Never saw anything about Plaintiff to arouse his suspicions. The Cooper party are one way & the other party are the other way - think general opinion is her character is good. Thinks he might have associated more among her friends than on the other side. There were charges against Cooper. She was at my house a good deal. She was talkative and talkative.

W. Scott - sworn for Plaintiff said has known Plaintiff two years 1846 when her father lived on my farm in Pennsylvania, the family then stood high - the Plaintiff then moved to Illinois since that I have not known her character until 1854 in November & since, it is good outside of the Cooper party. At Henderson a person can't remain neutral. I tried it but was forced in - in one crowd her character is good in the other it is bad - one party is called the Henderson party the other Cooper party & the other the girl party.

Lawrence Riley - sworn for Plaintiff testified, Don't know Plaintiff's character - have heard general say she was a bad character - up to quarrel character good.

G. W. Hawkins, for the Plaintiff sworn testified, Is acquainted with Plaintiff never heard anything as to her character - never saw anything amiss. Stories about her came out about year ago last summer. Never heard anything against her until the difficulty.

David Henderson sworn for Plaintiff testified that he was the man referred to by Mr. Gay & other witnesses - that he knew Plaintiff from a little girl. Knew her in Henderson was only once in her father's home in this State, did not visit her at her room, was married at that time. Never had sexual intercourse with her. I took her to ride, intended no insult, was never in bed with her, don't recollect of ever staying at my brother's when she was there.

^{Jason} Jason Duncan sworn for Plaintiff testified - he was Physician Dysmenorrhea is a painful menstrual discharge, membrane some times forms that obstructs menstruation in discharging, produces labor-pains sometimes difficult to distinguish early from

Membrane, can be done no close inspection. Female might ride to office & be delivered but not safe to do so, dangerous to produce abortion. General Rule is at Pregnancy, menstruation stops, are exceptions, has known some think after abortion flowing would come on in one or two months. Membrane closes the vaginal canal & produces dismenorea. Rhous Levi C. Lane was a man of considerable skill might be difficult to tell dismenorea from parturition pains. Could tell embryo it might stay in vaginal canal some time after expulsion.

Joseph Henderson sworn for Plaintiff testifies that he is a Physician - was called to see Plaintiff 24th to 30th March 1854. Plaintiff was then laboring under painful menstruation. Heard evidence of Dr. Humeau & concurs in the same, menstruation after abortion does not occur less than 2 to 3 months. David Henderson and Plaintiff never staid at my house together having knowledge, Sept. and witness don't speak to each other, have not for two or three years. pass each other & don't speak. Hemorrhage after abortion continues 2 to 3 days.

W^m Brown. Sworn for Plaintiff - said was a partner of Samuels before April 1854 not at Samuels shop much but after three 3/4 of the time Plaintiff did not call at shop when witness was there. shop was on Public Street have seen Plaintiff pass never stopped. Hardly probable she would stop without his knowing it but not impossible. Heard nothing of her character till after jues. In the Lodge Dr. did not claim it was anything but menstruation.

Robert Burton - sworn for Plaintiff said Plaintiff lived at witnesses house & was died from the first of February pain in head & back about 15th February. Deft. come to see her. he prescribed liniment & morphine said she had dismenorea. Next Monday morning Cooper came to see her & went into bed-room & attempted to get into bed with her & there was a fuss about it. this middle February she was not confined more than two or 3 days. Did not know of her going off in a buggy while there she remained two months after. Office of Defendant about 1/4 mile from my house, don't know anything about jues & his getting in bed with her except what Plaintiff told me. Deft. did not visit her again, think

Last visit was 15th February, don't think she went off in Buggy, think I should have known. & kept no longer.

Mr. Brewer sworn for Plaintiff sworn states that he was at Masonic Lodge when charges of Plaintiff against deft. were made, L. C. Lane then understood him to say he had not treated the Plaintiff did not hear him say, say she had aborted, said he had advised defendant not to go to see her as he believed her a loose character, Charles Clark present.

Charles Clark recalled by the Defendant said he was present at the Lodge when the first and second charges made by the Plaintiff against the Defendant were presented, the first charge of Plaintiff said nothing about defts, trying to go to bed to her, the second one did. L. C. Lane was there some thing was said I think about abortion, am not positive in the statement the issue was alleged to have taken place 12 March 1854. After 10th March 1854 Plaintiff was at Coopers painting window curtains, Joseph Henderson & Mr. M. M. M. & others got up the charges.

George Wright sworn for Defendant stated that he was at the Masonic Lodge, Lane was there at time of charges & he said he advised defendant not to attend on Plaintiff because he considered her loose character, Abortion was named once or twice perhaps three times, said defendant was called to see Plaintiff at night & he advised him not to go but that he went next morning. Lane used abortion with reference to the girl.

Millon Hays sworn for Deft. states that he saw Plaintiff at Coopers Office once or twice last spring a year, I was passing the office & asked the man with me who it was & he said it was Plaintiff, he did not see her face.

Which is all of the evidence that was given on the trial of said cause before said Jury. After the evidence was given to the Jury & before the Jury retired as the Request of the Plaintiff the Court gave to the Jury the following written instructions in the following words: The Court is asked to instruct the Jury that if they believe from the evidence that the defendant spoke the words charged in Plffs.

declaration as therein alleged. — they should find for the Plaintiff unless the Defendant has proved the truth of the pleas of justification by him herein pleaded. And that to sustain these pleas the Defendant is required to make the same proof that would be required in a criminal prosecution for the offence in said pleas mentioned. That the jury may give such weight to the evidence introduced on the trial as they may think it entitled to under all the circumstances of the case proved before them.

That the damages in case of this kind are in the discretion of the jury.

The words charged in the plaintiff's declaration imply malice and if proved the malice of the Defendant is in law implied. — And to the giving of which instructions the Counsel for the Defendant at the time of the giving thereof then & there excepted. At the request of the Defendant the Court gave to the jury the following within instruction numbered 1, 2, 3, 4, 5, 6, 7, 9 & 10 in the following words:

1. The Plaintiff is bound to prove the charge contained in the declaration substantially or she is not entitled to recover at all in this action.
2. To prove the charge substantially the Plaintiff must prove that the defendant spoke as many of the words mentioned in the declaration as amounts to the substance of all the words mentioned in the declaration.
3. If in speaking the words mentioned in the declaration the defendant used other words qualifying the words mentioned in the declaration in such manner as to show that he did not intend the offence of fornication then the defendant could not be found guilty under the declaration in this cause.
4. If it was proved by the sole witnesses who testified to the speaking of the words mentioned in the declaration that at the same time the defendant used other words in regard to the same matter and the jury believe that those words materially qualified those words proved to have been spoken in reference to said charge then the Plaintiff could not recover on such proof.
5. The credibility of all the witnesses is a question to be determined by the jury.

6. Although the jury believe that the words mentioned in the declaration were spoken by the defendant yet if the jury further believe that the defendant has substantially proved his pleas of justification they should find for the Defendant.
7. The charge that the Plaintiff is "a damned whore" is substantially proved by proving that she was a whore.
8. If the jury believe from the evidence that the Plaintiff told in effect that she had sexual connexion with said Henderson then although the Defendant repeated the report which said Plaintiff had so put in circulation it would not be slander.
9. Although the Plaintiff has proved the words as charged and the defendant has not proved his justification still the jury must only find such damages as the injury to such a character as the Plaintiff is proved to have had amounts to in the estimation of the jury.
10. which were given. The Counsel for the Defendant then & there asked the Court to give Instruction Number 8 which was in the following words & figures "8 The charge that the Plaintiff had sexual connexion with David Henderson may be proved by circumstances that raise the presumption of such connexion" which Instruction the Court then and there refused to give as asked, to the refusal of the Court to give the last mentioned instruction the Counsel for the Defendant then & there excepted. The Court modified & altered the said eighth instruction by the addition of words thereto so that said eighth instruction read as follows "8 The charge that the Plaintiff had sexual connexion with David Henderson may be proved by circumstances that raise the presumption of such connexion beyond a reasonable doubt." & the Court then & there gave to the jury the said instruction so modified & altered, & the modification and alteration of said eighth instruction & the giving of the same to the jury so modified and altered the Counsel for the defendant then & there excepted; whereupon the jury retired in charge of an officer to consider of the verdict & the said jury came into Court & an open Court presented their verdict in writing which was & is

State of Illinois }
Kane County } ss Kane Circuit Court September Term A.D. 1835

Margaret Shallenberger
vs.

Esaias S. Cooper }

And now at this Term of this Court came the
defendant in the above entitled cause by his attorney and moves the Court
for the arrest of judgment in this cause & for a new trial for the following
reasons.

1. The giving of improper instructions on the part of & at the request of the Plaintiff.
2. The refusal of the Court to give the instructions asked by the Defendant.
3. The modifying or alteration by the Court of the instructions asked by the Defendant
and the giving of the same so modified or altered.
4. The verdict is against Law and the evidence.
5. The want of a sufficient Declaration.
6. The want of a sufficient verdict by the jury.
7. The jury by their verdict did not find the issues joined herein for
the Plaintiff.
8. The jury by their verdict did not find the issues joined in this
suit against the Defendants.

Manning Douglass
Attorney for the defendant.

in the words following to wit: "We the jury find for the Plaintiff the
sum of five hundred dollars" to which verdict of the jury the Counsel
for the defendant then & there excepted and thereupon the Counsel for the
defendant entered his motion in arrest of judgment & for a new trial which
motion & the reason therefor is in the following words" (~~and the Court~~)
which motion upon due consideration thereof by the Court was by this Court
overruled & to the overruling of which motion the Counsel for the Defendant
then & there excepted. That the matters aforesaid may be made a matter of Record
& the Judge of said Court have during the Term aforesaid caused to be
signed & sealed this Bill of Exceptions this 5th day of October A.D. 1855.

John S. Thompson. 

Thereupon afterwards to wit on the 20th day of December A.D. 1855 came said
Defendant before the Clerk of the Circuit Court of said County and entered and
filed his Bond for Appeal in the words and figures following to wit:

Know all men by these presents that we Esaias S. Cooper as
Principal and Era Lane as surety are held and firmly bound unto
Mayaet Shallenberger in the penal sum of One Thousand dollars for the
payment of which we and truly to be made we bind ourselves, our
Heirs, Executors, Administrators, and assigns jointly, severally and firmly, by
these presents. Dated and sealed this second day of November A.D. 1855.

Whereas at the September Term A.D. 1855 of the Circuit Court in &
for the County of Knox & State of Illinois the above named Mayaet
Shallenberger recovered a judgment against the above bounden Esaias
S. Cooper for five Hundred dollars damages & the costs of suit and
whereas the said Esaias S. Cooper has prayed for and obtained an
appeal from said judgment to the Supreme Court of the State of Illinois.

Now therefore the condition of this obligation is such that if the said
Elias S. Cooper shall duly prosecute said appeal to effect in said
Court and shall pay or cause to be paid said judgment, costs, interest
& damages, in case the said judgment shall be affirmed then this obligation
shall be void, otherwise to be & remain in full force and virtue,
Signed sealed and delivered

In presence of.

W^m Hamilton. B. Lane.

E. S. Cooper.

Bra. Lane



The surety to this Bond is approved by me and filed this
20th day of December A.D. 1855.

Wm. I. Morry, Clerk.

State of Illinois
Knox County B of Wm I Morry Clerk
of the Circuit Court within and for the said County
of Knox in the State aforesaid Do hereby certify
that the within and foregoing Copy of Record and
Proceedings in the Case of Margarett Schallenberg
vs Elias S. Cooper is a true and correct copy
of the proceedings had therein as remains of Record
in my Office

Witness my hand and the Seal
of said Court at Knoxville this 5th
day of Jan A D 1856
Wm I Morry Clerk

Edwin A. Cooper } Sup Court of Illinois
 Appellant } Northern Division
 Margaret Schumacher } June Term 1854
 Appellee

- The Appellant assigns the following errors upon the within Record to-wit
- 1 The Court below Erred in giving the several instructions to the Jury as the part of the Plaintiff below —
 - 2 The Court Erred in refusing the 8th instruction of Appellant below
 - 3 The Court erred in modifying & altering the said 8th instruction of Appellant —
 - 4 The Court Erred in rendering judgment against Appellant & in favor of said Appellee upon the verdict of the Jury as rendered —
 - 5 The Court Erred in refusing to grant a new trial —

Wherefore Appellant prays that said judgment & may be reversed & remanded for a new trial

J. Manning
 Atty for Appellant

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Margaret Shallendager
✓

Essays A. Cooper
Copy Record

Filed June 11. 1856

L. Leland

LLR