No. 12997

Supreme Court of Illinois

Burnett

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vs.

Simpkins

71641

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 166.

Burnett

STATE OF ILLINOIS. SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1860.

JOHN BURNETT, PLAINTIFF IN ERROR, *vs.* SARAH J. SIMPKINS, by her next friend, DEAN SIMPKINS, DEFENDANT IN ERROR.

ERROR TO KNOX CIRCUIT COURT.

ABSTRACT OF RECORD.

This was an action of assumpsit commenced in the Circuit Court of Knox Co.
2 by the Defendant in Error, against the Plaintiff in Error, for a breach of marriage
8 contract. Declaration in the usual form. Plea, general issue. Case was tried before Hon. John S. Thompson, Judge of said Circuit Court, and a jury. The
10 jury found the issues for the Plaintiff, and assessed her damages at five thousand dollars, upon which the court below rendered judgment — to reverse which judgment the Plaintiff in Error brings this cause to this court.

EVIDENCE.

The Plaintiff below, in order to maintain the issues on his part, called

12 WILLIAM SCOTT, who testified that he had known the parties since February 1856, he boarded with Plaintiff's mother, and has continued to board with her from the time he became acquainted with the parties, until the present time — that soon after he went to board with the mother of Plaintiff, the Defendant commenced visiting the Plaintiff, and usually visited Plaintiff once or twice a week, from the spring of 1856 to the fall of 1857. Defendant frequently spent all day sunday and all sunday night with Plaintiff, and his attentions were almost exclusively paid to her during that time. Defendant usually went to meeting with her
13 on sunday evenings, and sat up with her alone after the rest of the family had retired. Defendant appeared to be courting Plaintiff. The Plaintiff then proposed to ask the witness the following question, to wit: "Was he courting her?" The Defendant objected to the witness answering said question, but the court overruled the objection and allowed the witness to answer said question, to which Defendant excepted. Witness answered, "He was courting her." Witness further stated that Defendant owned a mill, worth, with the land, ten or fifteen thousand dollars.

On cross-examination, witness stated that he did not know anything about the title to this property, or how much land belonged to it. Defendant did not tell him he owned the *land*, only the *mill*. The Plaintiff was in the habit of *swearing*.
14

but did not use more vulgar language than other folks- Never saw defendant go abroad with plaintiff except in the evening. Never knew defendant to take her out in the day time except to a fourth of July celebration.

. Mrs. Bates Hughes testified that she had known Plaintiff thee years. Boarded with Mrs. Simpkins, mother of plaintiff, from July 1856 to May 1858. The second or third Sunday after I went there, defendant came there to see plaintiff. He usually came to see plaintiff twice a week. He came in the day time on Sundays
15 and in the evening at other times. He often stayed nearly all night with plaintiff. When other young ladies were at Mrs. Simpkins' he paid little or no attention to them, but plaintiff and defendant were usually by *themselves*—used to walk together *frequently*. Defendant was courting plaintiff, and plaintiff seemed to receive his attentions with favor.

On cross-examination, witness stated that plaintiff and defendant usually sat up
16 together after the rest of the family were in bed. Plaintiff sometimes went with John Beaver. She sometimes went to dances and balls with Beaver. Never knew defendant to go to dances with plaintiff.

17 Sarah A. Simpkins testified that she was the mother of the plaintiff. That defendant first came to see the plaintiff in July 1855. At first he came but little, but afterwards he came oftener. He generally came on Sunday evenings, sometimes on week days. Towards the last, he came on Sunday mornings and stayed till into the night. He paid particular attention to plaintiff, more than to others.
18 They, (plaintiff and defentant,) would sit up together, after the rest of the family had retired. He waited on her frequently to *church*, and took her once to a *4th of July* celebration at Elmwood. The last time the defendant came to see plaintiff, was in November 1857. Plaintiff had a child born in *March* 1858. After I found out that plaintiff was pregnant, I sent for defendant to come and see me. He came, and I asked him if he intended to marry Jane, (the plaintiff.) He said he could not now. He said he had always intended to marry her, but had altered his mind. He said that he had loved her, but could not like her now, because she
19 was so *ill natured*. I accused him of seducing my daughter, (the plaintiff,) and he said he had, but it could not be helped now. Defendant was courting the plaintiff through the winter of 1855, the year 1856 and 1857 until November. He came to see plaintiff regularly, sometimes two or three times a week.

On cross-examination, this witness stated, that when the plaintiff got spunky,
20 or was in a passion, she would swear. She did not always swear. Plaintiff went to a show with John Beaver, in 1856, when defendant was going to see plaintiff, and the plaintiff sometimes went to balls and dances with Beaver.

C. B. Hughes testified that he had known the parties since 15th of February A. D. 1856. He went to board with plaintiff's mother in July 1856, and that soon after he commenced boarding there, defendant commenced visiting plaintiff.
21 Defendant visited plaintiff very often, and paid particular attention to her. Has

often seen Plaintiff and Defendant in a room alone together, and Defendant appeared to be courting Plaintiff. Defendant usually spent Sunday evenings with her. Plaintiff seemed to receive his attentions with pleasure.

On cross-examination, this witness stated that Beaver went to a ball at Maquon in company with plaintiff in 1856, and that John Burnett, the Defendant, was there at that ball. When Plaintiff was in a passion she would swear. When
22 she swore she would say, "d——n to Hell," and "God d——n it to Hell."

Michael Walsh testified that he had known Plaintiff seven years, and Defendant since 1850. He moved out of the Simpkins' neighborhood in 1855; saw Defendant at Mrs. Simpkins' house nearly every other Sunday during the sum-
23 mer of 1855; Defendant came to see Jane, Plaintiff; have seen Defendant in company with Plaintiff and others since he came to court Plaintiff.

On cross-examination this witness stated that he had lived *seven* miles from Mrs. Simkins' (Plaintiff's mother) since 1855. The Plaintiff swears when she is
24 in a passion. When Defendant told me he could not marry Plaintiff, he said "he could not live in peace with her."

25 John S. Winter testified to the marriage of Defendant to Catherine Gerritt, on the 31st day of December, A. D. 1859.

Here Plaintiff rested.

DEFENDANT'S EVIDENCE.

Samuel McDowell testified that he had known Plaintiff seven years and more, and has been with her a good deal at balls and parties, and also at her mother's house in 1856 and 1857. She swears about as bad as the rest of the women in that neighborhood, and her general reputation is about as good as the other girls in that neighborhood.

26 Jacob Housh testified that he had known Plaintiff three or four years, and that one time at infair and dance, at his (witness) father's house, she sat in his lap three or four hours; did not take any liberties with her.

Andrew Roberts testified that he had known Plaintiff since 1854. Have been
27 to dance with her several times. Plaintiff swears sometimes. Defendant's brother, George Burnett, used to come and see her before Defendant came. Never took any liberties with her person; may have put my hands in her bosom, but not often. Plaintiff and John Beaver were together often. She said she had got a letter from him after he went away. In talking to Plaintiff once about marrying Defendant, she said to me that "she could have got him once, but she did not want him," she said "she was too young, and would not have him," "she did not want him." Plaintiff and Beaver went off once to a dance over the river, and came back some time in the night. On cross-examination this witness stated
28 that he never attempted to put his hand in Plaintiff's bosom but once, and that was in 1858, and that then Plaintiff pushed him away. Knows of no improprieties on part of Plaintiff, but what I have stated. Said she could have got Defendant once, if she had wanted him, but that she was too young; think she was then sixteen years old. Have lived in Mrs. Simpkins' family since 1854, and have been treated as one of the family. When Defendant first came to see Plain-

tiff he came but once in two weeks, and he afterwards came every week, usually on Sunday, and sometimes he came in the evening of a week day.

Elizabeth Burnett testified that she is sister of Defendant, and has known
29 Plaintiff four or five years. Have heard Plaintiff swear; other *ladies* in that neighborhood do not swear. Have heard her call her mother a "God d——n bitch," and also wish her in Hell, and also wish her brother in Hell; have heard her abuse her mother and swear at her, and call her "a d——d old thing," and tell her to mind her own business.

30 One night when Plaintiff was at our house my brother, the Defendant, was in bed alone, and I heard Plaintiff go and get into bed with him.

On cross-examination witness stated that Plaintiff was generally in the habit of swearing. The night that Plaintiff went into Defendant's room I was in the
31 sitting-room sitting up with Dean Simpkins. The door of the bed-room was slightly open, and opened into the room where Dean Simpkins and I were sitting up together. Plaintiff went to bed about a half an hour after Defendant went to bed, and left Dean and I in the room alone. There was no light in the room where Plaintiff and Defendant went to bed. There were two beds in the room where Plaintiff went, the Defendant slept in one and I and my sister usually slept in the other. Did not hear any talking between Plaintiff and Defendant in the room; did not hear any *noise*; only heard Plaintiff get into bed with Defendant. Did not see her get into Defendant's bed, or see her in the bed. When I went to bed she was in my bed. Dean and I may have sat up three or four hours after Plaintiff went to bed. I could see my bed in the room, and did not
32 see Plaintiff get into it. We commenced visiting at Mrs. Simpkins four or five years ago.

Mrs. Rachael Reeder testified that she knows the parties; lived at Mrs. Simpkins' when Defendant was going with Plaintiff. Plaintiff and John Beaver were together a great deal, and I thought they were keeping company. Defendants brother, George Burnett, came to see her before Defendant did. Plaintiff swears a great deal; don't know that she swore before Defendant. Have heard her wish her mother in Hell.

33 Sarah Burnett testified *that in October*, 1857, Mrs. Simpkins, mother of Plaintiff, sent for me to come and see her. She asked me if I knew of her daughter's condition. I told her I did not. She said all she wanted was for Defendant to marry Plaintiff before it came to light. I asked her if my brother (the Defendant) had promised to marry her, and she replied, *not that I know of*, but what did he come to see her for. Plaintiff once came to my father's house with her brother, and when he desired her to go home with him, she told him to go to Hell, for she would not go back with him. I have heard Plaintiff call her mother
34 "a d——d old Devil," and "a d——d fool," and tell her to shut her mouth. Have heard her wish her brother in Hell. On cross-examination witness stated that Plaintiff swore when in a passion, and when not.

Mrs. Jane Simpkins testified that she had known the parties fourteen years. Had a talk with Plaintiff about marrying Defendant, and asked her when she

was going to have the wedding: *she said never*; that John, the Defendant, was not going to marry her, but another man. The Plaintiff told me, in 1858, that
35 *she* (*Plaintiff*) *would not have the Defendant, and that he had never promised to marry her.*

Joshua Burnett testified that Plaintiff told him *that Defendant had never promised to marry her, and had never asked her to have him*: this was in October, 1857. She told me Defendant had not been there for some time, and was not coming back any more. I asked her if the defendant had ever promised to marry her, and *she said no*, and if the defendant had ever asked her to have him and *she said no.*

36 George Burnett testified that he had known Plaintiff six or seven years. Have known her pretty well. Have known her to have sexual intercourse with a man more than once. Have known him to feel of her bubbies and thighs, and private parts; and have known her to allow a man to take such liberties as he pleased with her. This continued about a year and pretty often. In 1854 she asked me to go home with her, and I did so, and continued to visit her until September, 1855, when I quit.

37 On cross-examination witness stated that he was Defendant's brother, and that when he (witness) had connection with her she was fourteen or fifteen years old. That he had connection with her fifty or sixty times when he pleased. Does not
38 39 know when he *first* had connection her. Witness then details minutely all the
40 41 circumstances attending his intercourse with Plaintiff.

Clinton Housh testified that he had known Plaintiff about ten years. Plaintiff was in the habit of going to balls; at one time saw Plaintiff and John Beaver walking together near Mrs. Roberts' house in Maquon. There was brush on three sides of the house. It was after dark, but rather a light night. There was no road where they were walking.

42 On cross-examination witness stated that he had seen Beaver in Mrs. Roberts' house before he saw him walking with Plaintiff. Plaintiff was not in the house. They (Plaintiff and Defendant) were out in the brush away from the road.

Here Defendant rested.

PLAINTIFF'S REBUTTING EVIDENCE.

43 Mrs. Simpkins, mother of Plaintiff, testified that George Burnett commenced coming to see Plaintiff in April or May, 1854, and that he never came to see Plaintiff more than ten times.

Oliver Housh testified that George Burnett told him that he knew enough to clear his brother (the Defendant); said he knew as much as any man. Don't think he said he could swear to enough.

George Pickerell, William Clark, George P. Housh, Dr. Potter, William Scott, O. Stewart, Jacob Housh, and Alfred Sherman, all testified that they were well acquainted with the reputation of George Burnett in the neighborhood where he resided, and that his reputation was bad.

Here Plaintiff rested again.

Defendant then called Enoch Godfrey, who testified that he had known

44 George Burnett for some time; his character for truth is generally good; has heard some speak against it.

JESSE PICKERELL testified that George Burnett's reputation for truth and veracity was generally good; has not heard it talked much about.

JOHN COOK: Has not heard his character for truth and veracity questioned; has not heard it spoken of at all.

GEORGE W. HOFFMAN: Knows nothing bad of George Burnett's character; has never heard it spoken of but once.

R. B. SELBY: So far as I know, George Burnett's reputation for truth and veracity is good; have never heard it talked about.

JOSEPH HASBERGER, LEVI RAMBO, JOHN MCCALLISTER, and MILTON SCOTTS, did not know George Burnetts reputation for truth and veracity; had never heard it talked about.

This was all the evidence. And Plaintiff then moved the court to exclude from the jury all testimony tending to show immodesty, lewdness, or immorality, on the part of the Plaintiff with other persons, which were known to the Defend-
45 ant previous to, and while he was paying attentions to Plaintiff, and when he might have been supposed to promise to marry her, which motion was sustained by the court, and all such testimony excluded. To the sustaining of which said motion by the court, the Defendant excepted.

The Plaintiff then asked the Court to instruct the jury as follows, to-wit:

PLAINTIFF'S INSTRUCTIONS:

1st. That to entitle the Plaintiff to recover, it is not necessary that she should prove an express contract on the part of the Defendant with her to marry her, but that an agreement to marry may be inferred from those circumstances which usually accompany an agreement to marry.

2d. That if the jury believe from the evidence that the Defendant agreed and contracted with the Plaintiff to marry the Plaintiff, and after such agreement married Catherine Garrett, then it is not necessary that the Plaintiff should prove a request to Defendant to marry her in order to maintain this action, and

46 3d. That the time of making the marriage contract, and the time of refusal by Defendant, need not be proved precisely as alleged, but proof of different times will sustain the declaration if such times be before the commencement of this suit.

4th. If the jury believe from the evidence that the Defendant contracted with the Plaintiff to marry her, and refused to perform said contract, they will find for the Plaintiff such damages as justly arise out of the failure to perform such contract: The injury inflicted to the feelings of the Plaintiff, and to her standing in society, are consequences which may justly arise out of the breach of the contract,
47 and may be taken into consideration by the jury in the assessment of damages.

5th. If the jury believe from the evidence that the Defendant entered into a marriage contract with the Plaintiff, and under the pretence and promise of marriage seduced and begot the Plaintiff with child, and then refused to consummate such contract, that circumstance and violation of faith should be taken into consideration by the jury in estimating the damages.

6th. That the jury are judges of the credibility of a witness from his or her manner of testifying, and the probability of his or her story; and if the jury believe the story told by him or her to be improbable, contradictory, and inconsistent with itself, they are at liberty to disregard his or her evidence.

7th. That if the jury believe from the evidence that the credibility of George Burnett was impeached by the evidence of seven credible witnesses who were acquainted with his general reputation for truth and veracity in his neighborhood, and that his evidence was not sustained by evidence overthrowing such evidence of Plaintiff, the jury are at liberty to disregard his evidence.

All which are given.

To the giving of which instructions the said Defendant then and there in open court, excepted.

48 The Defendant then asked the Court to instruct the jury as follows:

1st. If the jury believe from the evidence that the Plaintiff, at the time of the supposed courtship, was a loose, lewd and profane woman, or a woman of bad character, they will find for the Defendant, unless a positive agreement to marry has been proved.

2d. If the jury believe from the evidence that the Defendant went with and waited upon the Plaintiff for other purposes than that of courting her for a wife, they will find for the Defendant, unless a promise to marry has been proved.

3d. A contract to marry must be reciprocal and binding upon both parties, and unless the Plaintiff has proved a contract or agreement to marry the Defendant, she cannot recover, and the jury will find for the Defendant [but such contract may be inferred from the circumstances which usually accompany a contract of marriage].

49 4th. Unless the Plaintiff agreed or consented to marry the Defendant, she cannot recover.

5th. If the evidence shows that the Plaintiff was a lewd woman, it is not necessary for the Defendant to show that such facts did not come to his knowledge until after the supposed promise of marriage, unless a positive promise of marriage has been established.

6th. If the evidence shows that the Plaintiff was a profane and lewd woman, of loose character and habits, it makss no difference whether the Defendant knew that fact before or after the supposed promise of marriage, unless a positive agreement to marry has been proved.

7th. If no express promise of marriage has been proved, then it can only be inferred from circumstances; and if the jury believe from the evidence that the Plaintiff was a lewd woman, of loose and bad habits, and accustomed to the
50 use of profane language, it makes no difference whether the Defendant knew these facts or not when he commenced courting her, and the jury must take all these things into consideration and judge from a review of all the evidence, whether the Defendant visited the Plaintiff for the purpose of marrying her or for *some other purpose;* and if they believe he visited her for *some other purpose* than that of marrying her, they will find for the Defendant in this action.

8th. If the Defendant knew and believed the Plaintiff was a lewd, lasciv.

ous and immoral woman, when he went to see her, and while he continued to visit her, the jury ought not to infer any agreement to marry her from any attentions he may have paid her under such circumstances.

9th. A statement to a third person by the Defendant that he intended to marry the Plaintiff will not of itself authorize the jury to infer a promise of marriage to her.

10th. This is an action to recover for the breach of a promise to marry, and such promise must be proved in the same way as any other promise [either express or by circumstances which usually accompany a contract of marriage].

51 11th. This is an action to recover for the breach of a promise to marry, and no evidence of seduction can be considered by the jury in this case, unless such seduction was had by and under an agreement to marry the Plaintiff.

12th. Unless the Defendant seduced the Plaintiff under a promise to marry her, any evidence of seduction in this case is excluded and ought not to be considered by the jury in making their verdict.

13th. If no promise to marry has been proved in this case, expressly or by circumstances which usually accompany a marriage contract, the Plaintiff cannot recover, and the jury will find for the Defendant whether the Defendant seduced the Plaintiff or not.

14th. In estimating the damages the jury will take into consideration the character and habits of the Plaintiff, and if they believe from the evidence that she was addicted to lewdness and the use of profane language, or either of them,
52 these circumstances should be considered; and no person guilty of such practices ought to recover as much damage as a pure, moral and virtuous person.

The Court gave the 4th, 9th, 11th, 12th, and 13th instructions as asked. The Court modified the 3d and 10th instructions as indicated, by inserting the words embraced in brackets in each of said instructions, and gave them as altered and modified. The Court refused to give the 1st, 5th, 6th, 7th, 8th and 14th instructions asked for by Defendant. To which decision of the Court in altering and modifying said instructions, and giving the same as altered and modified, and refusing to give the instructions asked for, Defendant then and there excepted.

53 The jury found the issues for the Plaintiff, and assessed her damages at $5,000. Defendant then and there filed his motion for a new trial, assigning as reasons for said motion the following, to-wit:

1st. Because the Court admitted improper evidence on the part of the Plaintiff.

2d. Because the Court excluded proper evidence on the part of the Defendant.

3d. Because the Court gave improper instructions upon the part of the Plaintiff, and refused to give proper ones upon the part of the Defendant.

4th. Because the verdict is against the evidence.

54 5th. Because the damages are excessive, and show partiality and undue influence upon the part of the jury.

But the Court overruled said motion, and rendered judgment upon the verdict in favor of the Plaintiff, and Defendant excepted.

H. M. & J. J. WEED,
Attorneys for Plaintiff in Error.

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Bennett

vs

Simpkins

Filed April 17-1880

L. Leland

Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

JOHN BURNETT, Plaintiff in Error,
vs.
SARAH JANE SIMPKINS, by her next friend DEAN SIMPKINS, Defendant in Error.
} *Error to Knox.*

BRIEF OF PLAINTIFF IN ERROR.

I. The evidence does not sustain the verdict. There is no evidence that there were mutual promises, or any promise at all. Without this the action cannot be maintained; mere admissions by the defendant, that he had "intended to marry the plaintiff," will not be deemed sufficient to charge the defendant in an action such as this, depending as it does upon the mutuality of promises. The plaintiff herself says that there was no mutual promises between herself and defendant.

Chitty on contracts, page 466
Parsons " " " 544
Feddler vs. *McKindley*, 21 Ill., 308.
Weaver vs. *Bachert*, 2 Penn. State R. 80.
Cole vs. *Cottingham*, 34 E. C. L. R., 297.

II. Evidence of the lewd and immoral character of the plaintiff is admissable in mitigation of damages; and it matters not whether such lewd and immoral conduct was before or subsequent to the time of making the promise. Although such conduct might not discharge the defendant if the promise were made by him knowing such conduct at the time, yet, it has seldom been questioned that such conduct might be given in evidence in mitigation of damages.

Johnson vs. *Caulkins*, 1 Johnson's Cases, 116.
Willard vs. *Stone*, 7 Cowen, 22.
McKee vs. *Nelson*, 4 Cowen, 356.

III. The instructions asked for by the defendant, and refused by the court, are clearly the law. There is no pretence here that there was any express promise made by the defendant. The jury were left to infer a promise, from the visits and conduct of the defendant; and the jury had clearly a right to consider from

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the circumstances, whether the defendant visited the plaintiff for the purpose of marriage, or for some other purpose.

IV. The evidence of seduction should have been excluded from the jury. It was clearly inadmissable an aggravation of damages. The cases that have been decided admitting such evidence, do not rest upon any well established or correct principles of law. It is impossible to find, anywhere in the English authorities, cases sustaining such a view. The plaintiff has no right of action for her own seduction, and could claim no damages therefor; and if she could not recover directly, we are at a loss to know upon what principle she may recover indirectly.

Chitty on Contracts.
Berks vs. *Shaine*, 2 Bibb., 343.
Weaver vs. *Bachert*, 2 Penn. State R., 80.
Feddler vs. *McKindley*, 2I Ill's., 308.

H. M. & J. J. WEED.

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John Burnett

vs Error to Knox

Sarah S. Simpkins

Brief of Plaintiff in Error.

Filed May 8, 1860

L. Leland

Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

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H. M. & J. J. WEED.

166

John Burnett

vs Error to Knox

Sarah A. Simpkins

Brief of Plaintiff in Error

Filed May 8. 1860

L. Leland

Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

JOHN BURNETT, Plaintiff in Error,
vs.
SARAH JANE SIMPKINS, by her next friend, DEAN SIMPKINS, Defendant in Error.
} *Error to Knox.*

BRIEF OF THE DEFENDANT IN ERROR.

1. The evidence in the case fully sustains the verdict of the jury and judgment of the Court.

Butler vs. *Eschleman*, 18 Ill. 44 to 46.
3 Gilm., *Greenup* vs. *Staker*, 202.
Tubbs vs. *Van Kleek*, 12 Ill. 446; 21 Ill. 316.

2. Defendant is not permitted to introduce evidence of acts of plaintiff on various occasions before and after her intimacy with defendant, tending to show that she was an unchaste woman, unless the same come to defendant's knowledge after his supposed promise, even in mitigation of damages.

Butler vs. *Eschleman*, 18 Ill. 44, 45, and 46.

3. The instructions asked for by defendant were not the law, and were properly refused.

Butler vs. *Eschleman*, 18 Ill. R. 44, 45, and 46.
Greenup vs. *Staker*, 3 Gilm. 202.

4. The evidence of seduction was proper evidence for the consideration of the jury, under all the facts of this case, as the consequence of the promise, in aggravation of damages.

Tubbs vs. *Van Kleek*, 12 Ill. pages 446 to 451.
Fidler vs. *McKinley*, 21 Ill. 308 to 316.

5. This Court will not disturb the verdict of a jury, or reverse a judgment on error, because of the admission of improper, or the rejection of proper testimony, or for want of proper directions or misdirections of the Judge who tried the cause, provided the Court can clearly see, by an inspection of the whole record, that justice has been done, and that the errors, if any, would not affect the merits of the cause.

Greenup vs. *Staker*, 3 Gilm. 216.

6. The damages in this case are not excessive, and the Court will not disturb the verdict or judgment unless it is apparent from the great disproportion between the offence and the finding that the jury acted under *prejudice*, *partiality*, *gross ignorance*, or *disregard* of *their duty*.

Fuller vs. *McKinley*, 21 Ill. 316.
3 Gilm. 216, *Greenup* vs. *Staker*.

TYLER & SANFORD,
Attorneys of Defendant in Error.

John Burnett
vs 166
Sarah S. Simpkins
et

Defts Brief

Filed May 3 1860
L. Leland
Clerk

State of Illinois
Knox County } ss

Pleas before the Honorable John S Thompson. Judge of the Tenth Judicial Circuit of the State of Illinois. at a Court began and held at the Court House in the City of Knoxville on the Third Monday of April in the year of our Lord One Thousand Eight Hundred and Fifty eight it being the nineteenth day of said month in said year

Present The Hon John S. Thompson Judge
James H. Stewart States atty
Cephas Arms Clerk
George W. Enlow Sheriff.

Sarah J. Simpkins by her
next friend Dean Simpkins
vs
John Burnett } Assumpsit

Be it remembered that at said Term of said Court this suit was pending and that the Declaration filed therein on the 9th day of April A.D 1858. is in words and figures as follows to wit

State of Illinois. County of Knox } ss

Knox Circuit Court April Term
A.D. 1858

John Burnett the Defendant in this suit was summoned to Answer Sarah J. Simpkins (who sues by her next friend Dean Simpkins) the Plaintiff in this suit of a plea of trespass on the case on promises

For that whereas heretofore to wit, on or about the 25th day of September A.D 1856. at the County of Knox in the State of Illinois in consideration that the said Plaintiff being then and there sole and unmarried, at the special instance and request of the said Defendant, had then and there undertaken and faithfully promised the said Defendant to marry him the said defendant. When She the said Plaintiff should be thereunto afterwards requested by the said defendant underdoon and then and there faithfully promised to marry the said Plaintiff, when he the said Defendant should be thereunto afterwards requested, And the said Plaintiff avers, that She confiding in said promise and undertaking of the said defendant hath always from thence hitherto remained and continued & Still is, sole and unmar-

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said, and hath been for and during all the time aforesaid to wit at the County aforesaid, whereof the said Defendant hath always had notice, yet the said Defendant not regarding his said promise and undertaking, but contriving and intending to deceive and injure the said Plaintiff in this behalf after the making of his said promise, and undertaking, to wit, On or about the 31st day of December AD 1857 at the County & State aforesaid, wrongfully & injuriously married a certain other person to wit. one Catharine Garrett contrary to his said last mentioned promise and undertaking so by him made as aforesaid, to wit, at the County of Knox and State aforesaid

And whereas also heretofore, to wit, on or about the 17th day of June AD 1857 at the County of Knox aforesaid in consideration that the said Plaintiff being then and there unmarried, at the especial instance and request of the said Defendant, had then and there undertaken and faithfully promised the said Defendant to marry him the said Defendant, he the said defendant undertook and then and there faithfully promised the said Plaintiff to marry her the said Plaintiff in a reasonable time then next following, And the said Plaintiff

4 ours that she confiding in the said last mentioned promise and undertaking of the said Defendant, hath always hitherto remained and continued and still is sole and unmarried and hath been for and during all the time last aforesaid. to wit at the county aforesaid all of which the said defendant had notice. Yet the said Defendant And although a reasonable time for the said Defendant to marry her the said Plaintiff elapsed since the making of the said last mentioned promise and undertaking of the said Defendant. Yet the said Defendant not regarding his said last mentioned promise and undertaking, but contriving and intending to deceive and injure the said Plaintiff in this behalf after the making of the said promise and undertaking to wit. on or about the 31st day of December AD 1857. at the County of Knox and State aforesaid, wrongfully and injuriously married a certain other person to wit one Catharine Garrett Contrary to his said last mentioned promise and undertaking by him made as aforesaid to wit at the county of Knox & State aforesaid

And whereas also heretofore. to wit on or about the 10th day of October AD 1857 at the county of Knox and State aforesaid in consideration that the said Plaintiff

3- being there and there sole and unmarried at the like special instance and request of the said Defendant, had there and then undertaken and faithfully promised the said Defendant to marry the said Defendant, he the said Defendant undertook and there and there faithfully promised the said Plaintiff to marry the said Plaintiff, and the said Plaintiff avers that she confiding in the said last mentioned promise and undertaking of the said Defendant hath always from thence hitherto remained and continued and still is sole and unmarried, and hath been for and during all the time bewixt at the county aforesaid. And although a reasonable time for the said Defendant to marry the said Plaintiff hath elapsed since the making of the said last mentioned promise and undertaking of the said Defendant Yet the said Defendant not regarding his said last mentioned promise and undertaking but contriving and intending to deceive and injure the said Plaintiff in this behalf after the making of his said promise and undertaking to wit on or about the 31st day of December A D 1857 at the County of Knox and State aforesaid wrongfully and injuriously married & certain other person to wit one Catharine Garrett

contrary to his said last mentioned promise and undertaking so by him made as aforesaid to wit, at the County and State aforesaid To the damage of the said Plaintiff Five Thousand Dollars and thereon she brings her suit &c

Sylvester Stanford
Attys for Plff

And afterwards to wit on the 26th day of the month of April in said AD. 1858 further proceedings were had herein and an order made by said Court which reads as follows to wit

Sarah J. Simpkins by her next friend Dean Simpkins
vs
John Burnett
} Assumpsit

This day came the parties by their attornies and by agreement it is ordered by the court that this suit be continued until the next term thereof at the defendants cost Thereupon it is considered by the court that the Plaintiff have and recover of the said Defendant her cost by her in this suit. at this term of this Court & stended and may have execution therefor

7 And afterwards at a Term of said Court began and held at the Court House in the City of Knoxville in said County & State on the Third Monday in the Month of October in the year of our Lord One Thousand Eight hundred and fifty Eight it being the Nineteenth day of said month in said year further proceedings were had therein, to wit on the 20th day of said month & during said Court, And an Ord caused to be entered upon the Records of said Court which reads as follows to wit

Sarah J. Simpkins by her next friend &c
vs
John Burnett } Assumpsit.

This day came the Defendant by his attorny And moves the Court for a Continuance herein. And upon being advised in the premises it is ordered by the Court that the motion be allowed, And that this cause be continued until the next term thereof at the defendants costs. Thereupon it is considered by the court that the Plaintiff recover of the defendant her costs by her at this term of this Court Expended and may have Execution therefor

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State of Illinois }
Knox County } ss.

Pleas before the Honorable John S Thompson Judge of the South Judicial Circuit of the State of Illinois. at a court began and held at the Court House in the City of Knoxville in the County and State aforesaid on the first Monday of the month of June in the year of our Lord One thousand Eight Hundred and Fifty nine. it being the 6th day of said month in said Year

Present Hon. John S Thompson Judge
Hayes & Stewart States Atty
Chas Ams Clerk
Andrew Thompson Shff

On the 13th day of June AD 1859. and during said Term of said Court. the Defendant filed his plea herein - as follows to wit

Josiah J. Simpkins by Dean
Simpkins his next friend
vs } In the Knox C C.
John Burnett } June T. 1859

And now comes the said Defendant by Gibson his attorney & for plea. says that he did not & protesting in manner and form as the said Plaintiff in his declaration aforesaid hath alleged

9 against him. & this he prays may be
inquired of by the country &c
By Gibson his Atty
And the said Plaintiff doth the Like
Tyler & Sampson Attys of Plff

And afterwards to wit on the Sixteenth day
of June in said year and at said Term of
said Court. further proceedings were had
in said cause. The Record of which reads
as follows to wit

Sarah J Simpkins by Dean Simpkins
her next friend
vs } Assumpsit
John Burnett

This day came the parties &
their attornies and Issue being joined for
trial put themselves upon the Country Thereupon
came a Jury to wit James White Peter Lacy
Thomas Collinson Reuben Heflin. Jesse Perdue
Isles Cook Ephraim Palmer William Burnside Jr
Simon S Stuckey G. W Himes Hollis M Hale
& Francis Colton who being elected tried and
Sworn well and truly to try the issue joined
therein. after hearing part of the Evidence, are per-
mitted to disperse under charge of the Court
and required to meet the Court at 8 O'clock
tomorrow morning

10 And afterwards to wit on the 20th day of said month in said Court further proceedings were had herein as follows to wit

Sarah J Simpkins by P & C
vs
John Burnett
Assumpsit

This day again came the Parties and their Attornies. And also came the jury empaneled herein and after hearing the conclusion of the Evidence and Argument of Counsel retired to consider of their verdict

And afterwards to wit on the 21st day of June AD 1860 further proceedings were had herein the Record of which reads as follows

Sarah J. Simpkins by her next friend Dean Simpkins
vs
John Barnett
Assumpsit

This day again came the Parties and their Attornies and also the Jury empanelled herein and upon their oaths do say "We the Jury find the Issues for the Plaintiff and assess her damage at the sum of Five Thousand

Dollars". Thereupon came the Defendant by his attorney and moves the Court for a new trial herein.

On the 24th day of June AD 1860. to wit on the last day of said Court. the Court caused the following. Order to be entered upon the Records of said Court to wit

Ordered by the Court that all motions pending in said Court for new trials, & Motions in arrest of Judgment. Not otherwise disposed of are ~~overruled~~ hereby overruled

On the 20th day of June 1859 the Defendant
filed in said Court his first bill of Exceptions
which is in words as follows to wit

Be It Remembered that on the
trial of this cause. the Plaintiff here
moved to Exclude all testimony tending
to show immodesty, lewdness, or immorality
on the part of the Plaintiff with other persons
which was known to the defendant.
prior to and while he was paying
attentions to her and when he might
have been supposed to promise to marry
her. which motion was allowed by the
& all such testimony excluded by the
Court. To which decision of the Court the
defendant then and there on the trial
of said cause by his counsel Excepted
in open Court. which Exception is allowed
& signed & made a part of the Record

John S Thompson (Seal)

And afterwards. came the Defendant
by his attorney. & Court as the 26th day of

14 belonged to it Dept did not tell him he owned the land, only the Mill

The Plaintiff was in the habit of swearing, common swearing. did not use more vulgar language than other folks— never saw the Plaintiff go abroad with dependant except in the evening, when they sometimes went to meeting together. Never knew dependant to take her out in the day time except to 4th July celebration at Elmwood

Knew John Beaver, he was a young man about twenty three years of age. he boarded at Mrs Simpkins. the mother of Plff. While I Boarded there — Never knew him to court Jane. He once took her to Knoxville to a circus while dependant was visiting her others went with them

Mrs Bates Hughs testified that she had known Plaintiff three years That she went to board with Mrs Simpkins in July 1856 Staid there until May 1858. Except 4 Months in Winter of 1857 & 1858— Recollect of seeing Dept there 2d or 3d Sunday after I went there to board & came once or twice a week to see Jane, usually came in day time Sundays & in evenings of a week day— often saw Dependant at the house — he appeared to be attentive to Jane Stayed in the evening, generally Sunday

16 consisted of Mrs Simpkins. Witness and husband John Shaw. John Beaver — Campbell, Capt Scott Jane Simpkins the Plaintiff & a younger Sister — Shaw Beaver & Campbell were young men about 24 years of age — Dean Simpkins a brother of Plaintiff & a younger brother were in the family, also Andrew Roberts who was a young man & worked for Mrs Simpkins

Defendant & Jane usually sat up together in the kitchen & Witness & family generally went to bed and left them there alone

Never knew any one to set up with Jane but the defendant —

She went with Beaver once or twice to Balls at Mayson in 1856 but generally went with Dean her brother Defendant was present at the Ball when Beaver waited — She went to dances some never knew defendant to go with her to dances

Beaver took her once to a circus at Knoxville went about eight in the morning & came back before Sundown — in 1856 — She sometimes went to dances with myself (witness) & husband — I left before the dance was over and she remained, do not know who came home with her — Never knew of her being in bed with Beaver or any other Man

17 Never knew any talk between Jane and her mother about any difficulty about Beaver Dont know of her mother ever accusing her of sleeping with Beaver.

Never heard any talk of the kind John Beaver was around with her the same as other members of the family never knew of her riding or walking with Beaver & never knew of any quarrel between Beaver & the family.

No one was keeping company with her except dependant during the time I was there at Mrs Simpkins

Never knew of Affs sleeping with any man Dont know what Beaver went away for know of no trouble. Beaver went away from Mrs Simpkins in the Fall of 1856

Sarah A Simpkins testifies that she was the mother of Plaintiff who is in her 19th year The dependant first came to see Jane in July 1855 — At first he came but little, but afterwards came often Generally came on Sunday evenings - sometimes on week days

Towards the last he came on Sunday mornings and staid till into the night & kept company with Jane Dept Paid particular attentions to Jane (the Aff)

more than to others. When they came home from Church, they would set up together after the rest of the family had retired. Sometimes stayed late and sometimes not so late

He usually kept company with Jane alone when he came to see her

He visited on her frequently to Church & took her once on the 4th of July to Elmwood to a celebration in AD 1856

The last time Defendant came there was in November 1857 - He married Catharine Garrett on the last day of December 1857 Plff had a child March 20 AD 1858.

After I found Jane was in the family way I sent for Defendant to come and see me & he came, and I asked him if he was going to marry Jane he said he could not now - I asked him if he considered himself a gentleman He said he had, but could not now I asked him. if he had been coming all this time to deceive Jane; he said he had not I then told him he had spoiled her character & ruined my satisfaction forever He said he had always intended to marry her, but had altered his mind

I asked him why he had not altered his mind before he went so far

17 He said he loved her & liked to be with her & liked her company.

I asked him why he could not like her yet? he said She was too ill natured. I asked him if he did'nt think she would make him a good wife? He said he did - I accused him of seducing my daughter Jane - he said he had. but it could not be helped now

He was courting her through the winter of 1855 the year 1856 & 1857. till November - he came regular sometimes two or three times a week The families of Burnett & my family, visited together a good length of time upon any of his visits to see Jane - On the examination upon Esqr Godfrey defendant said it was done & he was sorry for it but it could not be helped now

Plff went to Parties some, but did not go to all. After February 1857. She did not go at all - The Plaintiff has always lived at home with me and is unmarried The Defendant was at my house frequently when other young ladies were there, and would talk with Jane instead of others, and she with him and they would be together

On cross examination this witness stated that Jane had a child

March 20. 1858 She did not go into company much after she was pregnant
Never told Jane Simpkins or Wash. Simpkins or Sarah. Burnett that John Burnett had told me he never intended to marry Jane - never found John Beaver in bed with Jane - he left my house because I did not like him
When Jane got Spunkey she swore - did not usually swear - no one kept company with her but John (Dept) while he was coming to see her - She went to a Show with John Beaver, while John was coming there in the summer of 1856
She went to evening meetings with John Dept but never in the day time
Jane and Beaver went to the show in a Buggy by themselves, but others went in company with them - they went away between 9 & 10 in the morning & came home before Sundown
Other members of my family sometimes swear - I bring them up to suit myself - I have corrected them for swearing often - I never saw or know of any impropieties on the part of Jane with Beaver

C. B. Hughes was next called who testified that he had known parties since the 15th February 1856 He went to Mrs Simpkins to board July 28 1856. I

21 soon after he went there I think it Sunday evening Defts came to see Jane - I boarded there from July 1856 till February AD 1858 except 4 months that I was away in London y 1858 He Paid her attentions - sat up with her in the Kitchen. I have seen Plffs deprdant in a room alone together several times sunday afternoons & appeared to be courting her - Sometimes went to church with her in the evening - Jane seemed to receive his attentions with pleasure Defts was generally there Sundays & Sunday Evenings and frequently in conversation with her - Defts paid particular attention to Plff when other young ladies were there - their attentions were mutual. I have often seen Defts in Kitchen alone with Jane when I went to bed I had to go through the Kitchen to my bed room - have seen them go to Church & parties together in company with Plffs & no other person kept company with Jane to my knowledge

On cross examination this witness stated that he thought Beacon went to a Ball at Magnon in company with plaintiff in 1856 & witness & wife all went together & John Burnett the defts was there at that Ball

She sometimes went to dances with witness & his wife - When in a passion

22. She could swear- When she swore, she would say d—n it to hell & God d—n it to Hell did not swear only when in a passion- it was not common for Plff to swear- Beaver left Mrs Simpkins in 1856 The young people generally in that vicinity were in the habit of attending Balls. When she went to balls & parties with us. She generally came home with & I never knew her coming home with any one else

Michael Walsh Testified that he had known Plaintiff 8 years and Defendant ~~three years~~ since 1850 the defendant did not go about much only to church; did not go to dances I moved out of Simpkins neighborhood in 1855 & have been there occasionally since Have seen Burnett at Mrs Simpkins attending to Jane on Sundays two or three times In August of 1855 or latter part of July I first noticed defendant at Mrs Simpkins on Sundays when I was there. and I was there about every Sunday. during that Summer Burnett the defdt was there about every other Sunday visiting Jane the Plff. Defendant associated with the young people of that neighborhood & the Simpkins & Burnett families associated together before 1855- In Nov. or dec. of 1858 I had a

23. coversation with Dependant. The Dependant asked how is my boy getting along? I replied he is a fine boy & it was a pitty he did not have it to take care of as he ought to have it. He said he would have him when he was three years old. any how.

Before the above mentioned talk I went to Mr Burnetts house. called Burnett out of doors & had a conversation with the dependant at request of Mrs Simpkins (this was in Oct. or Nov. 1857) called him out. he came to gate. I said this is pretty work you have done; He said yes. but it cant be helped now. I told him Mrs Simpkins wanted to know what he was going to do about it? I asked him if he was married, he said no; I said if he did not marry her the old woman would sue him. He said he was willing to settle it & do what was right but if She sued him (Dept) should put the best foot forward. I asked him, John will you marry her? He said No. I intended to do it but I cant now. I have seen Dept in company with Pff & others before he came to court Pff. I have seen the Burnett girls at Mrs Simpkins, the Dept sisters. they use them generally on Sunday Dept lived at the Mill in 1850. about

¾ of a mile from Mrs Simpkins & then lived on his Fathers ~~farm~~ old place about 3 miles from Mrs Simpkins. about one year Then on 40 acres that he got off the land of his Father, where he raised one or two crops, & then he came back to the Mill. lived in Mrs Simpkins neighborhood all the time - the 40 acres was about a mile & a half from Mrs Simpkins residence

Cross Examined I left Magnon in 1855 and have lived about 7 miles from there since Andy Roberts & Jane the Plaintiff came to my home in company in Summer of 1857 Roberts came after a load of Corn for Mrs Simpkins on Saturday. She stayed a week - he stayed all night and went home with the corn on Sunday morning - I took Plaintiff home

The Plaintiff swears when she is in a passion. Does know that she swears every day - dont know of any other young men going with her. I was there only on Sundays When John told me that he could not marry her, he said he could not live in peace with her - He did not say she was vulgar or Rough -

John knew she swore. I joked him about getting a wife & talking the Widows

25 daughter. he said she swore too much this last was said in Summer 1855

John S. Winter was called who proved the marriage of defendant to Catharine Sanns on the 31st day of December AD 1857 by McGowan a Justice of the peace of Knox County Illinois

Here the Plaintiff rested

The Defendant then called Samuel McDowell who Testified that he had known Plaintiff seven years or more, and had been with her night smart at balls & Parties & dances & at her Mothers house in 1856 & 1857 Had seen her at a great number of Balls. she went with her brother. dont know of her going with any one else. Her general character was lively, about like the rest of the girls. She swears about as bad as any of the women around there. her reputation is about the same as the rest of them For the last three years she has not been to Balls as much as before her general reputation for Modesty & virtue in the Neighborhood was considered as good as any of the Girls I never saw her alone with any young man

Cross Examination

I saw Biff at James Pickells in 1854 or 1855 saw her at Potters Hall bypr 1855 saw her & Deff at McManuins, dont recollect of seeing her at a Ball in 1857 dont recollect of seeing her at any other Parties or balls only at Levils in 1856 & 1857

Jacob Housh testified that he had known Plaintiff 3 or 4 years have seen her in ~~at~~ Potters Hall at Niagara at a dance She sat on my knee one night, about two or three hours at an infair & dance at my fathers Geo. Housh — did not put my hand on her person, or take any liberties with her — She wanted me to get up & let her have the chair. I would not & She sit in my lap

Cross Ex. —

We were all frolicking at —

She wanted a chair & I set down in it & She sat in my lap — other Ladies in the room & Gentlemen at the time & I think other ladies sitting on the other knee at the same time — I did not think any harm of it. and dont think they did

Andrew Roberts, testified that he had known Plaintiff since 1854 had been in the family of Mrs Simpkins, worked for

27. her most of the time since 1854. has been to dances with her, at Nelson Selbys & other places when she wanted to go Plaintiff is much like the rest of the girls- She swears sometimes - not a general practice - Have been with alone - Defendants brother George Burnett used to come to see her before defendant came - I never took any liberties with her person - may have had my hand in her bosom, but not often - She and Beaver were considerable together - she said she got a letter from him after he left. Beaver has gone away to Kansas or Executive - She has been lying on the bed with me - Have seen her on the bed with others at Mrs Whites last winter - I never have had connection with the Plff.

In talking about marrying John once last summer, she said she could have got him once, but she did not want him - she was too young & would not have - she did not want him - She and Beaver went off once together to a dance over the River & came back in the night, in the Fall before he went away in 1856

The morning Beaver left Mrs Simpkins there was a disturbance Jane was in bed & her last sister, in a room adjoining

the breakfast table. Beaver got up from the table and went to that room - Mrs Simpkins went to the door - & immediately called for her son Dean - Dean did not come & I got up & went out

Cross Ex. have lived at Mrs Simpkins since 1854 & have been treated as one of the family took Riff to Ball with others in Spring of 1853 or 4 Never attempted to put my hand in her Bosom but once & that was in 1858 & she pushed me away immediately. I never knew any improprieties on the part of Plaintiff, other than what I have stated - She said she could have got John once if she had wanted him but she was too young then - think she was 16 years old. George Burnett came then before John came. Burnett girls came to Mrs Simpkins frequently. Dyer at 1st came to see Jane every two weeks. afterwards he came about every Sunday and sometimes of a week day evening. Mrs Hughes was there at Mrs Simpkins the morning that Beaver left and the time of the difficulty that I spoke of don't know as Mr Hughes was there - The time I spoke of Riff's being on the Bed with me was when a girl was sick in

29 the Bed and two or three other girls were on the bed at the same time, & at the time at Mrs White's others were on the bed at the same time, and it was in the winter of 1859 - the room that Beaver went into that morning from the table when I spoke of a difficulty he & I had, was a room, where the men left their boots when they went to bed at night, & went in their in the morning & got them - & it was usual for the boys or men to go in their boys and after breakfast.

I do not know of Beavers ever talking any liberties with Miss - It was the room where Mrs Simpkins & Jane & her sister all slept

Elisabeth Barrett Is a sister of defendant has known Plaintiff 4 or 5 years. Knew her to go home with defendant once when he did not ask her - have heard her swear - other Ladies in that neighborhood do not swear - I have heard her call her mother a God d - n bitch & wish her in hell, and also wish her brother was in hell - have heard her abuse her mother & swear at her & call her a d - d old thing & tell her to mind her own business

One night she was at our house & had her shoes & stockings off ready to go to bed

about eight o'clock in the evening – She had talked with me about going to a dance that night and had promised me she would not go. The dance was at her. cousin Curtis Phillips about one mile & a half from our home or fathers – A Party came along and stopped for her – I tried to persuade her not to go. She said she would go & She did go – When I said she would not go. She said it was a lie for she would go – She did not come back that night. This was while my brother was going to see her –

One night my brother was in his room in bed alone, and she went into the room and I heard her get into bed with him

She often came to our home and stayed all night and sometimes all night

On oaths & animation She stated that plaintiff swore, can't tell how many times – when she was angry she swore & used rough language – Don't know that any Ladies in that neighborhood swear except Plaintiff

I have heard her Mother swear – thinks Jane swears generally

That night I told the party she was not going. She said it was a lie She was going – She night that Jane went into Johns Room. I was with Dean Simpkins her

brother in the sitting room sitting up with him The door was slightly open into the bed room - the Bed room was the next Room to the one Dean and Dean & I was sitting up in the door of the Bed room opened into the room we were in. & was partly open she did not shut it when she went to bed Pfff went to Bed about a half hour after John Dept went to Bed & left Dean & I in the room alone dont know how long Dean & I set up. dont know whether it was three or four hours. there was a light in the room we were in no light in the Bed room when Dept & Pfff went to Bed. there was two Beds in the Bed Room - one that Dept slept in & one that I & my sister slept in - The one that Dept slept in had curtains around it - ours did not I did not see Jane get into bed with Dept. I did not hear any talking or anything of the kind in the Bed Room between Pfff & Dept Did not hear any noise, I only heard Jane get into Bed. when I went to Bed She was in my bed, I did not see her get into my brothers bed, or see her in his Bed We slept together that night in that room - I never said any thing about it to Dean or to Jane the Pfff I could see my Bed in the Bed room, & did not see Jane get into it. I might have

but rather suspicious. He commenced visiting at Mrs Simpkins two 5 years ago Jane was young Dept Rund the Soon at the time he was waiting on her it was 3 years ago that Pipp went to the dance they were respectable people when the dance was at my cousins — It was three or four years ago that Jane went into the Bed Room & went to bed at our house — I did not hear my Mother ask Jane to go home with us, at the time I stated she went without his Depts inviting her he might have invited her & I not heard it but I dont think he did

Mrs Rachael Ruder

Knows the Parties — lived with Mrs Simpkins when John the Dependant was going there Jane & John Beaver were together a great deal & I thought they were keeping company

Andy Hearsh also came home with her & I spoke to her & sat up with her Beaver sent her letters after he left — so she told me

Depts Father George Burnett came to see her before Dept died — Horace Hare took her to a Ball — She seems a great deal — Dont know that she seen before Dependant

Cross Examined

33. Thinks She was a little flutter by[illegible] dependant than at other times. Have heard her wish her mother in hell I swear a little sometimes. say damn it sometimes when I get mad. Saw Jane alone with Beaver on the Porch once by the door. the door opens from the room I was in Bed & Mrs Simpkins in bed in same room door opens from when we were in bed & Jane & Beaver right by the door. She came to bed awhile after we went to bed

Sarah Burnett In October 1857
Mrs Simpkins mother of Plaintiff sent for me to come and see her. I went She asked me if I knew of her Daughters condition? I told her no. She said all She wanted was for Dependant to marry Jane before it came to light. if he did not live with her at all. I asked if my brother had promised to marry Jane? She replied "not that I know of, but what did he come to see her for?
She (Jane) came once to my Fathers with her brother & he wanted her to go home with him. She cursed him and told him to go hell, for She would not go back with him
She staid till dark & then went off with

34 dyendant - they were not gone long
bfor dependant came back alone a
think she was a very mild girl

One morning I was at her Mothers
when a young man came in and kissed
& hugged her at the breakfast table &
then they went into another room - I
have heard her call her mother a
d-d old Devil and a d-d old fool
& tell her to shut her mouth for she didnt
know anything any how I have heard
her wish her father was in hell &c

Cross & annulled

I have heard her father & Mother Swear often
Pfft swore when mad & when not
Plaintiff was setting at the table at the
time Andrew Johnson hugged her & kissed
her & I was awfully frightened. He hugg
her around the chair - I was sitting at
the Table at the time. Mrs Simpkins & the
folks were present at the time in the same
room

Mrs Jane Simpkins - Have known
the parties 14 years - I had a talk with
Jane about marrying the Dependant, and
asked her when she was going to have the
wedding - She said never - that John
was not going to marry her, but another girl

The Plaintiff told me in 1858. that she

35 would not have the dependant. & that he never promised to marry her.

Cross Examined

This last conversation was at Mrs Simpkins in Jany 1859 down cellar. We were there for Apples. I asked Jane if she was going to marry dependant? She said No. She would not have him & he had never promised to marry her

Joshua Burnett. The Plaintiff told me that dependant had never promised to marry her. & had never asked her to have him This was in Oct 1857. She told me John had not been there for some time & was not coming back again. I asked her what the trouble was? Why says she, his Mother says I am not good enough for him. I asked her Did John Burnett ever promise to marry you. She said he did not. Did he ever ask you to have him? She said no

Cross Ex.

I am brother to dependant And do not recollect exactly when the conversation took place. It was in October or Nov. 1857 I live about 3 or 4 miles from Mrs Simpkins. think in afternoon cant say positively. We were alone I dont know where

way I was going. or Plaintiff was going.
Dont know whether she had been to my house & was going home with me from my house. or whether we were coming from Mrs Simpkins or not, Dont know whether I met her or not. or whether we were both going the same way or not. the conversation took place about 3/4 of a mile Mrs Simpkins near where an old log house used to stand formerly occupied by Mrs McMannis Dont recollect any other thing that was said Am a married man, have been in her company some.

George Burnett

Has known Plaintiff for 6 or 7 years - have known her pretty well - have known her to have sexual intercourse with a man, more than once - Have known him to put his hands & thighs & private parts and have known her to unbutton his breeches - known a man to be alone with her & do as he pleased - and when he was going away. She would ask him if he didnt want some - this continued about a year & pretty often In 1854 she asked me to go home with her - I did so and continued to visit her until September 1855 when I quit.
She used to come to my Fathers often & want me to go home with her - Sometimes I went.

37. I used to go to see her on Sundays
On cross Ex. this witness testified that he was a brother of dependant and that Plaintiff was then 14 or 15 years old at the time he had connection with Miner Twenty seven years old. after I stopped going to see her I got married I had connection with her myself Individually fifty or Sixty times when I pleased - I began to go to see her in May 1854 - On the evening of 4th Sept 1855 I had connection with her the first time in the middle room when Mrs Simpkins sleeps at Mrs Simpkins house Mrs Simpkins was in Bed in Same room I was in S.W. corner Mrs S was in another corner N.E. corner I sat in a chair and she was straddle of my legs - Girls laughing & talking in room at Same time -
Rachael Chitty & Martha Simpkins were in the Same room I was sitting in a chair. She unbuttoned my Pants - I had connection with her in that way did not set in that way long no light in the room at that time two beds in the room Dont know when I first had connection her - did not say it was the first time - tell what I said first I say last - I told her I was going to be married - was whispering to her - sat there - hugged & kissed her & felt of her legs & told her I was going home soon

She asked me if I didnt want some. I told her she ought not to let me nor any other man have any - had told her so before. Told her I was going to see the other girl the next night & didnt want to sit up all that night - She said as it would be the last I might as well stay then as anytime - She proposed it to me & unbuttoned my pants - She was then setting straddle of my legs - sat so for a little time till her Mother called her to bed -

Aff always made the proposition to have connection & I now took a banter - I had connection with her another time it was in the same room, at the same place in the room and in the same manner I was sitting in a chair & She straddle of my legs her Mother was in Bed in the same room, I dont know whether any one else was in the room at the time - Dont know what time of evening or night it was it might have been 12 or 1 o'clock there was a light in the room at the time We were in the NW corner of the room Mrs Simpkins in the SE corner We were seven or eight feet from Mrs Simpkins bed She in Bed Dont know whether Mrs Simpkins was awake or asleep at the time - I said there was a light in the room, then I say so got - Dont know what was said dont know whether I asked her or not to let me have

39. connection with her guess I had said something to her about having some- we were right west of Mrs Simpkins bed at the time we had intercourse as stated I never told anybody about it until I told Judy Mead about it to day. I never told anybody that I could swear John clear or that I knew enough to clear John or could swear to enough to clear him. I never told Oliver Hawk anything of the kind - I told Oliver Hawk I knew as much as anyone else

I Dont know when I first had connection with ~~her~~ plaintiff. dont know where I first had connection with Pltf I had connection with her at William Simpkins's home first, Wm Simpkins, Gregg McCoy. Allen McCoy Lewis McCoy Horatio Simpkins Margaret Simpkins Oliver Hawk Mary Mowry Elizabeth Barnett & Dean Simpkins were there at the home of William S. at the time at a party. Pltf unbuttoned my Pants in the North East corner of the room, there was only one room in the house, a light in the room. All there & more were in the room at the time, we were setting on the bed on the side of the bed, there or four others setting on the same side of the bed at the same time besides us. might have been a half dozen, I dont know who

40 they were She unbuttoned my pants while we were all sitting on the side of the bed, did not keep my pants unbuttoned long dont know how long - She asked me if I was not going home with her - I went home with her Did not have connection with her at Wm Simpkins but had connection with her after we got home to her mothers, in the same room where her mothers sleeps Dean Simpkins came home about an hour after we did - do not know as I saw any one there at Mrs Simpkins after we got home no one up at the house doors not locked, we went to Middle room Pff set me a chair, & She took a chair & set down by me - I hugged & kissed her a few times & dont know what all I did do dont know whether any other person was in the room we set in the north W. corner of the room did not remember whether there was a light in the room or not. I put my hands under her clothes. She made no objections I asked her if I might have connection with her? She said I could do just as I pleased I had connection with her in about an hour after we got home I sit in the chair & She straddle of my legs. had connection in that way was about half hour sitting that way dont know. when Dean Simpkins came or went to

41 came home dont know whether he came into the room where we were or not dont know whether I saw him or not - dont know whether he came before or after I had connection with the Plff - Dont know which door Dean came in at when he came home Dont know whether this was the time that I han stated about before - Dont know of any other time that I had connection with her - dont know of any other place when I had connection with her -

Clinton Housh

I have known Plff about 10 years she was in habit of going to Balls Ball frequently in that place Plff was generally at Balls 3 or 4 years ago. ~~Saw~~ Know John Beaver saw him & the Plaintiff walking together near Mrs Roberts in Wayne in the evening near bush was coming towards Mrs Roberts house Bush on 3 sides of house - I had been at Mrs Roberts and as I was coming away I saw Beaver & Plff walking together towards her house I did not see Beaver buttoning up his Britches. it was not long after dark it was rather a light night - There was no road there - some bush & the ground was rough. between Mrs Mrs Roberts & the

42. Depot it was not very far from the house that we met them There was a Rail Road Dance at Mrs Roberts that night There was another house. 20 Rods away from Mrs R. they were coming from towards that house, I dont think there was any road between the two houses that house was in the back part of town I never saw any man at any time taking any liberties with the Pff-
Generally came to Balls with her brother Dean

Cross Ex

Had seen Beaver in the house before but did not see Pff there - they were out in the bush away from the road Mrs Roberts lived in S E corner of the town Mrs Simpkins lives North East from there. Beaver and Pff were coming from the north East & were about 20 feet from Mrs Roberts house when I first saw them coming towards the house, Stephensons & Alden's houses were in the direction also from which they were coming. There was no path where they were - dont know whether there was a path to Stephensons from Mrs Roberts or not - they were about 10 feet out of the path or road - there was Brush on three sides of Mrs Roberts house close up to the house - this was in 1856

The Defendant here rested

43. The Plaintiff then recalled Mrs Simpkins the mother of Pfff - Who testified that George Burnett came to her house to see Jane in 1854 and kept company with her from about April or may 1854

I am certain he never came to see Jane more than ten times

Alvin Housh testified that George Burnett told him he knew enough to clear his brother - said he knew as much as any man - Dont think he said he could swear to enough

George Pickerell William Clark, George P. Housh Dr Potter Wm Scott O Stewart, Jacob Housh & Alfred Thurman all testified that they were well acquainted with the reputation of George Burnett in the neighborhood where he resided for truth & veracity, and that his reputation was bad

Here the Plaintiff rested again

The Defendant then called. David Housh who stated that he did not know what George Burnetts character for truth was. had heard it spoken against - there were some words some bitter

Enoch Godfrey testified he had known Geo. Burnett some time. his character for

truth is generally good have heard some speak against it

Jesse Pickrell Testified his reputation for truth & veracity was generally good - had not heard it talked much about

John Coon Testified he had not heard Geo Burnetts character questioned, had not heard it spoken of at all

George W Hoffman Testified, I know nothing bad of George Burnetts character, never heard his character spoken of but once

Saml Hist Testified Did not know Geo Burnetts Reputation

Joseph Hashbarger Stated Dont know Geo Burnetts general reputation for truth

John McAllister Testified did not know Geo. Burnetts Reputation for truth

Levi Rambo testified but 4 or 5 times & did not know Geo Burnetts Reputation. have heard some few men speak hard against him

P B Selby Testified Dont know but I know Geo Burnetts reputation for truth & so far as I know it is good, have not heard it talked about Milton Lotts Stated he did not know George Burnetts reputation

The Defendant here closed on his part And this was all the evidence in the case

45 The Plaintiff then moved the court to exclude from the Jury all testimony tending to show immodesty. Lewdness or immorality on the part of the Plaintiff with other persons which were known to the Defendant, previous to and while he was paying attentions to her, & when he might have been supposed to have promise to marry her - Which motion was allowed by the court, and all such testimony excluded

To which decision of the court, the Defendant then and there on the trial of said cause excepted in open court, which exception was allowed and made a part of the Record

The Plaintiff then asked the court to instruct the Jury as follows

Plaintiffs instructions

1st That to entitle the Plaintiff to recover it is not necessary that she should prove an express contract on the part of the defendant with her to marry her. but that an agreement to marry may be inferred from those circumstances which usually accompany an agreement to marry

2d That if the Jury believe from the evidence that the defendant agreed and contracted with the Plff to marry the Plff. and after such agreement

46 married Catharine Garrett. Then it is not necessary that the Plaintiff should prove a request to defendant to marry her in order to maintain this action. And

3d That the time of making the marriage contract and the time of refusal by Defendant need not be proved precisely as alleged; but proof of different times will sustain the Declaration, if such times be before the commencement of this suit

Given

4th If the Jury believe from the evidence that the defendant contracted with the Plaintiff to marry her, and refused to perform said contract, they will find for the Plaintiff such damages as justly arise out of the failure to perform such contract: The injury inflicted to the feelings of the Plaintiff, and to her standing in society, are consequences which may justly arise out of the breach of the contract, And may be taken into consideration by the Jury in the assessment of damages

Given

5th If the Jury believe from the evidence, that the defendant entered into a marriage contract with the Plaintiff, And under the

47 Given

influence and promise of marriage, seduced and begot the Plaintiff with child, and then refused to consumate such contract, that circumstance and violation of faith should be taken into consideration by the Jury in estimating the damages

6th Given

That the Jury are the Judges of the ~~probability~~ credibility of a witness from his or her manner of testifying, and the probability of his or her story, and if the Jury believe the story told by him or her to be improbable, contradictory and inconsistent with itself, they are at liberty to disregard his or her evidence

7th Given

That if the Jury believe from the evidence that the credibility of George Burnett was impeached by the evidence of seven credible witnesses, who were acquainted with his general reputation for truth and veracity in his neighborhood, and that his evidence was not sustained by evidence overbearing such evidence of Pltff, the Jury are at liberty to disregard his evidence

All of which were given

48 To the giving of which instructions the said defendant then and there in open court excepted

The defendant then asked the court to instruct the Jury as follows

1st Refused If the jury believe from the evidence that the Plaintiff at the time of the supposed courtship was a loose lewd & profane woman or a woman of bad character, they will find for the defendant unless a promise & agreement to marry has been proved

2d Given If the Jury believe from the evidence that defendant went with and waited upon ~~it~~ the Plaintiff, for other purposes than that courting her for a wife, they will find for the Defendant unless a promise to marry has been proved

3d Given A contract to marry must be reciprocal and binding upon both parties; and unless the Plaintiff has proved a contract or agreement to marry the defendant, She cannot recover & the Jury will find for the Defendant (but such contract may be inferred from the

15 of said cause & cepted The Jury
rendered a verdict in favor of the
Plaintiff for the sum of Five Thousand
dollars

Whereupon the said dependant by
his counsel filed the following motion for
a new trial

Sarah J. Simpkins
by Dean Simpkins
her next friend
as
John Burnett

In the Circuit
Court June Term
AD 1859

And now comes the said
dependant Neal & Gilson his attornies
and moves the court for a new trial here-
in for the following reasons

1st Because the court admitted improper
evidence on the part of the Plaintiff

2 Because the court excluded proper
evidence upon the part of the dependant

3. Because the court gave improper instruc
tions upon the part of the Plaintiff & re-
fused proper ones upon the part of the
dependant

54/4 Because the verdict is against the evidence

5th Because the damages are excessive and show partiality and undue influence upon the part of the Jury

For all which reasons the said defendant moves the court for a new trial herein

By Mad & Gibson
his Attornies

Which motion was overuled by the Court & Judgment rendered upon the verdict and the defendant excepted then & there But it was much as the matters and things aforesaid do not appear of record, it is ordered that the exceptions aforesaid be allowed, & that this Bill be signed & sealed & spread upon the record

John S. Thompson

State of Illinois
Knox county } ss

I Cephas Arms Clerk of the Circuit Court within and for said county do hereby certify that the above & foregoing is a full, true and perfect

Transcript of the Record & all proceedings in said cause as the same remains of Record and on file in my Office

In testimony whereof I have hereunto set my hand & affixed the seal of said Court at the city of Knoxville this 30th day January A.D. 1860

Cyphas Amis Clerk



$15. cr. Reid

State of Illinois— Supreme Court. S.S.

Third Grand Division— April Term A.D. 1860.

John Burnett
Plaintiff in Error
vs
Sarah A. Simpkins. by her
next friend Dean Simpkins
} Error to Cass Circuit Court.

And now comes the said Plaintiff, and says: Because in the record and proceedings, and also in the rendition of the judgment in this Cause, manifest error hath intervened to the injury of the said Plaintiff in this Suit:

1st The Circuit Court erred in admitting improper Evidence offered by the Plaintiff.

2nd The Circuit Court Erred in excluding proper evidence offered by the Defendant.

3rd The Circuit Court Erred in giving instructions prayed for on the part of the Plaintiff.

4th. The Circuit Court erred in refusing to give the instructions asked for on the part of the Defendant.

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2nd The Circuit Court Erred in excluding proper evidence offered by the Defendant.

3rd The Circuit Court Erred in giving instructions prayed for on the part of the Plaintiff.

4th. The Circuit Court erred in refusing to give the instructions asked for on the part of the Defendant.

7th That the Circuit Court erred in rendering said judgment because the damages are excessive, unjust, and oppressive, and show great prejudice on the part of the jury—

W Thompson

5th The Circuit Court erred in refusing to grant a new trial, and over-ruling the motion therefor

6th The Circuit Court erred in rendering judgement in favor of the Defendant in Error, and against the Plaintiff in Error.

aside, and for naught held and esteemed:

H. M & D. J Reed
Attys for Plaintiff in Error.

Whereupon Comes the said Sarah Simpkins by her first friend Dan Simpkins by Tyler & Sanford her attys and say that there is not any Error either in the Record & proceedings aforesaid or in the rendition of the Judgment aforesaid And prays that the said Supreme Court may proceed to examine as well the Record & proceedings aforesaid as the matters aforesaid assigned for Error & that the Judgment aforesaid in form aforesaid may be in all things affirmed &c

Tyler & Sanford
Attys for Sarah J.
Simpkins by her
by & Dan Simpkins her
first friend Attys in Error

Sarah S. Simpkins by
her next friend &c
vs
John Burnett.

Record
~~Abstract~~ & Assignment
of Errors

Filed April 17. 1860
L. Leland
Clerk