

No. 14238

# Supreme Court of Illinois

Milborne

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vs.

Odell

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IN THE SUPREME COURT OF ILLINOIS,

FIRST GRAND DIVISION-----NOVEMBER TERM, 1862.

ABSTRACT.

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Richard Wilborne, } Plaintiff in Error,  
 VS. } Error to Franklin,  
 John Odell. } Defendant in Error.

This was an action of Trespass on the case for Slander, commenced at the April term, 1861, of the Franklin Circuit Court, by Richard Wilborne, who was Plaintiff in the Court below and Plaintiff in this Court against John Odell, Defendant in this Court and in the Court below.

The declaration contains two counts; the first count contains the following words: "Dick Wilborne, (meaning the said Plaintiff,) has been stealing my (meaning the said Defendant's) corn. Wilborne (meaning the said Plaintiff) stole my corn while I was gone to Shawneetown, my wife [meaning Defendants wife] saw him (meaning the Plaintiff) steal my corn—my wife (meaning Defendants wife) saw him (meaning Plaintiff) go into the crib with a sack and steal the corn."

The following words, charged to have been spoken in the hearing of William Rains, are contained in the second count: "Dick Wilborne [meaning the Plaintiff] has been stealing my corn [meaning Defendant's corn.] while I [meaning Defendant] was gone to Shawneetown, and if I [meaning Defendant] was you (meaning said William Rains) I [meaning Defendant] would make my Gal quit him.

To this declaration the Defendant filed a plea of not guilty at the April term, 1862, of the Franklin Circuit Court when the case was finally disposed of as follows as appears from the order of the Court made at said term—

Andrew J. Duff, Judge of said Court, being of Counsel in the cause before his election, S. R. Painter was chosen, by agreement of parties, to preside in his place—a Jury was called, and as appears from the Bill of Exceptions, the following evidence was introduced by the Plaintiffs before the Court and Jury to prove the issues on his behalf.—William Rains, a witness for Plaintiff:—"I had a conversation with the Defendant last March a year ago, don't know that I can recollect the precise words,—he said Dick Wilborne had been stealing his corn,—he said it was while he was gone to Shawneetown he done this matter,—I can't recollect the precise words, but, in the conversation, Defendant said Dick Wilborne had been stealing his corn. Defendant also said Dick Wilborne had stole his corn while he was gone to Shawneetown.—I asked him when it was and he said it was when he was gone to Shawneetown he said that Dick Wilborne had stole his corn.—and he further said, if he was me, he would make my girl or gal quit him,—she should not live live with no such a man. He said that his wife said that she saw him take the corn,—I don't recollect exactly whether she said she saw him or whether he took the corn. John Odell said that his wife said she saw him come into a little path that went towards the crib,—got a sack of corn, and went back with the sack of corn the same way."

Edward Parker, another witness for Plaintiff, stated on oath,—“he heard Defendant, Odell, say he understood that me and Mr. Rains was going to see him about Dick Wilborne stealing his corn, he stated he would see or something to that amount,—he would come mighty near proving it. I asked him then who seed him take the corn, and he said his wife saw him take the corn he said, and somebody else was there—he said his wife said he stole it. I never heard John Odell say he stole it, his wife had said to him that he had taken the corn and he believed it.” The Plaintiff here rested his case.

The Defendant then by his Counsel moved to exclude all the foregoing evidence from the Jury, and the Court accordingly excluded the evidence from the consideration of the Jury, to which ruling of the Court the Plaintiff, by his Counsel at the time, excepted the Plaintiff's Counsel, then entered his motion to be allowed to introduce further testimony before the Jury, which motion was denied by the Court, to which ruling of the Court the Plaintiff at the time excepted. The Jury then delivered the following verdict verbally, without retiring from the Bar:—"We, the Jury, find the Defendant not guilty; and the Plaintiff thereupon entered his motions for a new trial and in arrest of Judgment for the following reasons:—

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1st. Because the verdict was contrary to law.

2nd. Because it was contrary to evidence.

3d. Because it was contrary to law and evidence.

4th. Because the Court erred in excluding Plaintiff's evidence from the Jury.

5th. Because the Court erred in denying Plaintiff's motion to introduce additional testimony;—but the motion for a new trial and in arrest of Judgment was overruled by the Court and the Plaintiff's Counsel at the time excepted to the ruling of the Court in denying said motions.

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There are various errors assigned upon the Record, but the main points relied upon, and insisted on by the Plaintiff as erroneous, are first excluding the Plaintiff's evidence from the Jury instead of allowing the Jury to pass upon it with instructions from the Court as to the law.

see page  
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2nd. The Plaintiff contends the Judgement ought to have been arrested because it appears the verdict of the Jury was not committed to writing by them but was rendered verbally in the open Court without retiring from the Bar,—and 3d. The Plaintiff insists that the Court erred in excluding his evidence from the Jury and refusing to allow them to introduce further testimony, and brings the case into this Court, and for these reasons insists upon it that the Judgment of the Court below ought to be reversed.

R. S. NELSON,

E. V. PIERCE,

*For Plaintiff in Error.*

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AUTHORITIES REFERRED TO BY PLAINTIFF IN ERROR.

The Plaintiff in Error relies upon the following authorities in support of the 1st point relied upon: Mellick, vs. De Seelhoust, Breeze 171. In this case a non suit was forced upon the Plaintiff, or, which is the same in effect, the evidence was all excluded by the Court instead of the evidence being submitted to the Jury under instructions. See 12 Ills., 195, Breeze 231. Here no link was wanting as in the case of Williams vs. Clayton, ET AL 1st Scammon, 505.

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The declaration contains two counts; the first count contains the following words: "Dick Wilborne, (meaning the said Plaintiff.) has been stealing my (meaning the said Defendant's) corn. Wilborne (meaning the said Plaintiff) stole my corn while I was gone to Shawneetown, my wife [meaning Defendants wife] saw him (meaning the Plaintiff) steal my corn—my wife (meaning Defendants wife) saw him (meaning Plaintiff) go into the crib with a sack and steal the corn."

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To this declaration the Defendant filed a plea of not guilty at the April term, 1862, of the Franklin Circuit Court when the case was finally disposed of as follows as appears from the order of the Court made at said term—

Andrew J. Duff, Judge of said Court, being of Counsel in the cause before his election, S. R. Painter was chosen, by agreement of parties, to preside in his place—a Jury was called, and as appears from the Bill of Exceptions, the following evidence was introduced by the Plaintiffs before the Court and Jury to prove the issues on his behalf.—William Rains, a witness for Plaintiff:—"I had a conversation with the Defendant last March a year ago, don't know that I can recollect the precise words,—he said Dick Wilborne had been stealing his corn,—he said it was while he was gone to Shawneetown he done this matter.—I can't recollect the precise words, but, in the conversation, Defendant said Dick Wilborne had been stealing his corn. Defendant also said Dick Wilborne had stole his corn while he was gone to Shawneetown.—I asked him when it was and he said it was when he was gone to Shawneetown he said that Dick Wilborne had stole his corn.—and he further said, if he was me, he would make my girl or gal quit him,—she should not live with no such a man. He said that his wife said that she saw him take the corn,—I don't recollect exactly whether she said she saw him or whether he took the corn. John Odell said that his wife said she saw him come into a little path that went towards the crib,—got a sack of corn, and went back with the sack of corn the same way."

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William

(a)

Code

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For Printing in New York

H. S. NELSON

Printed at Cambridge in the year 1862

By T. H. B. 1862, Boston, 201.

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