

No. 12635

Supreme Court of Illinois

Collins.

vs.

Shehan, et al.

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1808

12635

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Prepared

United States of America }

STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Pleas, before the Honorable

George Maniemo

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the

Third Monday, (being the *Sixteenth* day) of

November in the year of our Lord one thousand eight hundred and

Fifty Seven and of the Independence of the said United States the

Eighty Second

Present, Honorable

George Maniemo

Judge of the 7th Judicial

Circuit of the State of Illinois.

Carlos Haven

States Attorney.

John L. Wilson

Sheriff of Cook County.

Attest;

Wm L Church Clerk.

Be it remembered that heretofore to wit,
on the 11th day of February, A D. 1857. John Collins, by
C. S. Cameron, his attorney, filed in the office of the
clerk of the Court aforesaid, his certain precept, which
is in the words and figures following, to wit-

State of Illinois } Cook County Circuit Court
County of Cook } ss. March Term A D. 1857.

John Collins

vs

James W. Shehan

Daniel Cameron Jr &

Andrew Matteson

Prepares on the case

Damages \$10000⁰⁰/₁₀₀

The clerk will please issue
process of summons in the
above entitled cause, returnable to the next term
of this court, and oblige

Chicago Feby 11th 1857.

C. S. Cameron

Atty for Plff.

Wm L. Church

Clerk

And afterwards, to wit on the day and year
last aforesaid, there was issued out of the office of
the clerk of said court, and under the seal there
of, the Peoples writ of summons, directed to the Sher-
iff of said county, to execute, and clothed in the
words and figures following, to wit-

State of Illinois }
County of Cook } p.

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

We command you that you summon James W. Shehan, Daniel Cameron Jr. and Andre Matteson, if they shall be found in your county, personally to be and appear, before the Circuit Court of Cook County, on the first day of the next term thereof, to be holden at the Court House in Chicago, in said County, on the First Monday of March next, to answer unto John Collins, in a plea of trespass, on the case to the damage of the said plaintiff as is said, in the sum of ten thousand Dollars-

And have you then and there this writ with an endorsement thereon, in what manner you shall have executed the same-



Witness, William L. Church, Clerk
of our said Court, and the seal thereof
at Chicago aforesaid, this eleventh day
of February, A D. 1857.

Wm L. Church

Clerk

And afterwards, to wit, on the 19th day
of February, in the year last aforesaid, said writ
was returned into the Court aforesaid, by said sheriff,
iff, endorsed as follows, to wit-

Served by reading to the within named James

W. Shehan, Daniel Cameron, the 17th February - Served
by reading to Andre Matteson, the 19th day of February
1857. Fees - 3 Services, \$1.50. 3 miles - .15 - 1 Return .10
\$1.75

John B. Wilson Sheriff

By Geo. Rommeys Dy.

And afterwards to wit, on the 16th day of March,
in the year last aforesaid, the said plaintiff, by his
said attorney, filed in the office of the clerk of said
court, his certain declaration, which is in the words
and figures following to wit -

State of Illinois } Cook County Circuit Court
County of Cook } ss. March Special Term, A.D. 1857.

John Collins, plaintiff in this suit, by C. S.
Cameron, his attorney, complains of James W. She-
han, Daniel Cameron and Andre Matteson, Defend-
ants therein, of a plea of trespass on the case. For that
whereas the said plaintiff now is a good, true, honest,
just, and faithful citizen of this state, and as such
hath always behaved and conducted himself, and
until the committing of the several grievances by the
said defendants as hereinafter mentioned, was al-
ways reputed, esteemed and accepted by and amongst
all his neighbors, and other good and worthy citizens
of this state, to whom he was in any wise known,
to be a person of good name, fame and credit - to
wit at the County of Cook in the state of Illinois

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And whereas also the said plaintiff hath not
ever been guilty of, until the time of the commit-
ting of the said several grievances by the said
defendants as hereinafter mentioned, been sus-
pected to have been guilty of Theft or Robbery or
any other such crime - By means of which
said premises, the said plaintiff, before the com-
mitting of the said several grievances by the said
defendants as hereinafter mentioned, had de-
servedly obtained the good opinion and credit
of all his neighbors - and other good and worthy
citizens of this state - to whom he was in any
wise known - to wit at the County aforesaid - Yet
the said defendants, well knowing the premises,
but greatly ^{enjoying} the happy state and condition of the
said plaintiff, and contriving, and wickedly and
maliciously intending to injure the said plaintiff,
in his good name, fame and credit, and to bring
him into public scandal, infamy and disgrace, with
and amongst all his neighbors, and other good and
worthy citizens in this state, and to cause it to be
suspected and believed by those neighbors and citi-
zens, that the said plaintiff had been, and was
guilty theft, robbery, and subornation of perjury, and
to subject him to the pains and penalties of the
laws of this state, made and provided against and
inflicted upon persons guilty thereof, and to vex, har-
ass, oppress, impoverish, and wholly ruin the said
plaintiff, heretofore, to wit, on the twenty fourth day

of December, in the year of our Lord, one thousand
eight hundred and fifty six, at the County afore-
said, wickedly and maliciously did compose and
publish, cause and procure to be published a certain
false, scandalous, malicious, and defamatory libel, con-
taining amongst other things, the false, scandalous,
malicious, defamatory and libellous matter following-
of, and concerning the said plaintiff, to wit:—"A
Robber at large—(meaning the said plaintiff) "The
Hack-driver, John Collins (meaning the said plaintiff)
who, as we stated the other day, was arrested for
robbing a countryman named Blanchard, instead
of being held for trial, was set at liberty, and is
again ready to entrap and rob the first stranger
who is green enough for his purpose—This scoundrel,
(meaning the said plaintiff) is one of the most
adroit thieves and robbers in Chicago—he, (mean-
ing the said plaintiff) has been frequently arrested
for crimes, of ~~rob~~ the commission of which, there
is no more doubt that he (meaning the said
plaintiff) was guilty, than there is that they were
committed—yet in every instance he, (meaning
the said plaintiff) has managed to escape justice—
generally through the agency of false swearing,
(meaning that he, the said plaintiff, had been
guilty of subordination of perjury) Not long ago,
when Collins, (meaning the said plaintiff)
was brought up for stealing a large number of
Trunks, although no one entertained a doubt of

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his guilt (meaning the said plaintiff) guilty, he,
(meaning the said plaintiff) was set at liberty,
in consequence of the testimony of a number of
witnesses (all Hackmen) who swore positively in
his favor - afterwards, the same witnesses had the
boldness to admit publicly that they received \$
50 each, for swearing Collins (meaning the said
plaintiff) clear - why they, (meaning the witnesses)
were not indicted for perjury, is more than we,
(meaning the said defendants) can account for -
We (meaning the said defendants) don't doubt
that the same instrumentality (meaning that
the said plaintiff had procured false witnesses)
was made use of by Collins, in the present case - he
(meaning the said plaintiff) was discharged
upon the testimony of Hackmen (whose names
we have not at hand) who perjured themselves
for his (meaning the said plaintiff) benefit -
However astonishing it may appear, this is no
uncommon practice among Hackmen - With
some exceptions, they (meaning the Hackmen)
are leagued together for purposes of rascality, and
scruple not to resort to any means to screen each
other from detection and punishment - The
best advice we, (meaning the said defendants)
can give to strangers is, have nothing to do with
them - We (meaning the said defendants) are
not apprised whether Collins (meaning the
said plaintiff) still retains his Hackman's li-

cense- By means of the committing of the said several grievances, by the said defendants, as aforesaid, the said plaintiff, hath been, and is greatly injured, in his said good name, fame and credit- and brought into public scandal, infamy and disgrace, with and amongst all his neighbors, and other good and worthy citizens of this state, to whom the innocence and integrity of the said plaintiff in the premises, were unknown, have on account of the committing of the said several grievances, by the said defendant as aforesaid, from thence hitherto suspected and believed, and still do suspect and believe the said plaintiff to have been, and to be a person guilty of theft, robbery and subordination of perjury, and have by reason of the committing of the said grievances, by the said defendants as aforesaid, from thence hitherto wholly refused, and still do refuse to have any transaction, acquaintance or discourse with the said plaintiff, as they were before used and accustomed to have, and otherwise would have had, to the damage of the said plaintiff, of ten thousand dollars, and therefore he brings his suit &c.

C. S. Cameron

Atty for Plff.

11th December. Court granted leave to amend-

(The foregoing is a copy of declaration as amended)

And afterwards, to wit, on the 16th day of May, in the year last aforesaid, the said Defendants, by their Attorneys, filed in said Court, their certain Plea, which is in the words and figures following, to wit—

State of Illinois—

Cook County—

Daniel Cameron

James W. Shehan

Charles Matteson

vs

April Term 1857.

John Collins

Said defendants come and defend the wrong and injury when &c. and say they are not guilty in manner and form as the plaintiff hath declared; against them— and of this, they put themselves upon the country—

Hyne

Marsh

& King-

for depts—

And the plaintiff doth the like—

C. S. Cameron—

Plffs Atty

And afterwards, to wit, at the November term of said court, to wit, on the 23rd day of December, in the year last aforesaid, the following, among other proceedings in said court, were had and

entered of record, to wit -

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John Collins

vs

James W. Sheehan, Daniel
Cameron Jr. & Andrie Matteson

Graspas on the case

This day come the said parties, by their respective Attorneys, and issue being joined herein, it is ordered that a jury come, whereupon come the Jurors of a jury of good and lawful men, to wit,

E. Lane.

David Barnes

Wm H. Hood

Thomas C. Lamb,

Alonso Snow

H. L. Bristol

John DeWitt

B. S. Tucker,

C. Hollanabee

John Webster

D. C. Ledyard

Wm Thomas.

who being duly elected, tried and sworn, well and truly to try the issue joined aforesaid, after hearing the evidence adduced, arguments of counsel, and Instructions of the Court, retire to consider of their verdict, and afterwards come into Court, and say, "We, the Jury, find the defendants guilty, and assess the said plaintiffs damages herein, to the sum of Three hundred and Fifty eight Dollars -

Whereupon the said defendants move the court for a new trial of this cause -

And afterwards, to wit, at the January Special Term of said Court - to wit on the 28th day of January, A D. 1858. the following, among other proceedings in said Court, were had and entered of record, to wit -

John Collins

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vs

James W. Sheehan Daniel

Camron Jr. & Andre Matteson

Transp on the case

This day ~~and~~ ^{again} ~~pass~~, come the said parties by their attorneys, and counsel having been heard upon the motion of the said Defendants for a new trial of this cause, and due consideration being thereupon had, and the premises fully understood, the court doth overrule said motion, and to the ruling of the court, the said defendants by their counsel, now here except-

Therefore it is considered, by the Court, that the said plaintiff do have and recover of the said Defendants, his damages of Three hundred and fifty eight Dollars, in full, by the jury aforesaid assessed, together with his costs and charges by him in this behalf expended, and have execution therefor-

Whereupon the said Defendants pray an appeal to the Supreme Court of the State of Illinois, which is granted, on condition that they do, on or before the first day of the next term of this Court, execute and file their appeal bond, with

as sureties, in the penal sum of Five hundred Dollars, conditioned according to law. And it is further ordered that said defendants have until the first day of the next term, to prepare and file this Bill of exceptions in this cause-

And afterwards, to wit, on the 27th day of February A. D. 1858. the said defendants filed in the office of the clerk of said court, their certain appeal bond, which is in the words and figures following to wit—

Know all men by these presents, that we, James W. Sheahan, and Daniel Cameron, Andre Matteson, William Rice, & Philip Conly, of the County of Cook, and State of Illinois, are held and firmly bound unto John Collins, also of the same County and State, in the penal sum of five hundred Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly, by these presents.

Witness our hands and seals this 27th day of February, A. D. 1858.

The condition of the above obligation is such, that whereas the said James W. Sheahan, Daniel Cameron and Andre Matteson, did on the day of December A. D. 1857. in the Circuit Court, in and for the County and State aforesaid, and of the November Term thereof, A. D. 1857. recover a judgment against the above bounden Sheahan, Cameron and Matteson, for the sum of three hundred and fifty eight Dollars, and — cents, besides costs of suit— from which said judgment of the said circuit court, the said Cameron, Sheahan and Matteson, have prayed for, and obtained an appeal

to the Supreme Court of said State.

Now therefore, if the said James W. Sheahan, Daniel Cameron and Andre Matteson shall duly prosecute their said appeal with effect, and moreover, pay the amount, of the judgment, costs, interest and damages rendered, and to be rendered, against them, in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void - otherwise to remain in full force and virtue -

Taken and entered into
at my office in Chicago
before me, this 27th day of

February A.D. 1858.

Wm L. Church

Clerk.

James W. Sheahan

Daniel Cameron Jr.

A Matteson

W. Rice

Philip Conley

And afterwards, to wit: on the 24th day of February A.D. 1858, and as of the 23rd day of December last past, the said defendant filed in said Court their Certain Bill of exceptions which is in the words and figures following to wit:

Cook County Circuit Court.

of November Term, 1887.

James W. Sheahan	}	Lease Libel.
Daniel Cameron		
Andee Matteson		
ads		
John Collins		

Be it remembered that on the trial of the above entitled cause, at the November term of said Court, A. D. 1887. before the Hon George Manierre, Judge of said Court, upon the issues, & pleadings, therein joined, had and made, the Plaintiff to sustain the issue, upon his part, introduced the witnesses hereinafter named, who being respectively and duly sworn, to speak the truth, the whole truth, and nothing but the truth, respectively deposed and testified as follows, to wit—

Martin G. White R.W. testified as follows—

I know the plaintiff, John Collins. knew him prior to December 24th 1886— he was engaged in the hack business. I saw the article in the Times in regard to Collins— called his attention to it on a Sunday evening— in the Rock Island House— He asked me to go with him to the Times office to see the editor about it— I went there with him— saw Mr. Cameron— no other person was there— Collins asked Mr. Cameron if that was his paper— Cameron replied it was— Col-

lins then shewed him the article, and asked him to retract it, as it was wrong, and injurious to him, and to his business. Mr. Cameron said that Mr. Matteson wrote the article, and if it was wrong, he would have Matteson correct it. He also told Collins, he had better see Matteson, and speak to him about it. That he would probably find him then at the Court House. Collins and I then went to look for Matteson, and did not find him. I did not see any retraction of the article, but instead of that, the paper came out with a ~~very~~ worse article a day or two afterwards.

Cross-examined by Mr. Hogue - I was at that time ~~fixed~~^{head} porter at the Rock Island House. am now porter at Stanwix Hall. Have known John Collins (plaintiff) a little over two years. The interview with Mr. Cameron was in December, 1856. I took no note of the day, but know it was the next day, or the next but one, after I shewed the article to Collins. which was on Sunday. We went to the Times office, up stairs. two pairs I think. the door opened right in front of us. think in second story. was never there before or since these. No person was there but Cameron. we went to another office in the same street to look for Matteson. It was a few days beyond, on the ground floor. enquired for Matteson, was told he was not there. - I saw Cameron in the streets three or four times, and in court, since then. did not speak to him. The article was

in Sunday morning's paper - I know it was on Sunday that I showed it to Collins, because I went to prayers on that day - went to the Methodist church - in the forenoon - Collins found me reading the article before I went to prayers - I called his attention to it, and said, "Here's an article about you - you're a robber at large." It appeared by it that he perjured himself and robbed - He called on me about one o'clock, the same day, and asked me to go with him to see the editor of the paper - He said he would take me down as a witness, and if they did not retract the article, he would sue them - He did not say this when I first showed him the article - This was the second time he came - He was in his Sunday dress, when I returned from church, I was told that Collins wanted me for a witness - He came in the afternoon, and asked me to go to the Firm's office, I went with him the next day I think - not more than one or two days afterwards - It was the article of Sunday 21st December, we went to see the Editor about - (The Times of December 24th 1856. was here shown to the witness, by Mr. Hoynes, and his attention was called to the libel.)

Q. "Is that the article in regard to which you went with the plaintiff to see the editor?" A, I can't say whether this is the article or not - cannot swear whether this is the article - it was an article like this similar in

language - it was in Sunday's paper - This paper is dated Wednesday, December 24th 1856. A. "I don't swear this was the same - Don't think this is the article we went to see Defendant about - Q. "Then this is not the article in regard to which you saw Mr. Cameron?" A. "It was one similar to it. I said I saw another article almost like it - a few days afterwards -"

Re-examination - Mr. Arnold, counsel for the plaintiff, here handed to the witness a copy of "The Times" of Sunday morning, December 21st 1856. and called his attention to an article therein -

Q. (By Arnold) "Look at that, and see if that is the article in regard to which you saw Mr. Cameron - A. "yes sir, this is the article." Paper of the 24th December handed to witness - This is the article, which appeared after we called upon defendants - Called about the first article went the next day - never called after appearance of second paper -

Cross examination by Mr. Hoynes. Q. "Did you ever go with the plaintiff to see the editor of the Times in regard to any other article?" A. "No sir - Q. "Did the plaintiff ever ask you to go with him, to see them in regard to any other article?" A. "No, sir - Q. "Did the plaintiff, to your knowledge, ever see them in regard to any other?" A. "No sir - not that I know of -"

Counsel for the ^{defence} defendant moved the

court to exclude the evidence of this witness altogether, on the ground that it refers to a previous article, not alluded to by plaintiff in his declaration etc.

Motion overruled by the Court. Exceptions taken by defense.

Plaintiff introduced in evidence, "The Daily Chicago Times" of Wednesday, December 24th, 1856 containing the following article, to wit-

A Robber at large. The hackdriver John Collins, who, as we stated the other day, was arrested for robbing a countryman named Blanchard, instead of being held for trial, was set at liberty and is again ready to entrap and rob the first stranger who is green enough for his purposes.

This scoundrel is one of the most adroit thieves and robbers in Chicago. He has been frequently arrested for crimes, of the commission of which there is no more doubt that he was guilty, than there is that they were committed - yet in every instance he has managed to escape justice, generally through the agency of false swearing. Not long ago, when Collins was brought up for stealing a large number of trunks, although no one entertained a doubt of his guilt, he was set at liberty in consequence of the testimony of a number of witnesses, (hackmen) who swore positively in his favor. Afterwards the same witnesses had the boldness to admit publicly, that they received \$50 each, for swearing

Collins clear. Why they were not indicted for perjury is more than we can account for.

We do not doubt that that the same instrumentality was made use of by Collins in the present case. He was discharged upon the testimony of hackmen, (whose names we have not at hand) who perjured themselves for his benefit. However astonishing it may appear, this is no uncommon practice among hackmen. With rare exceptions they are leagued together for purposes of rascality, and scruple not to resort to any means to screen each other from detection and punishment. The best advice we can give to strangers is, have nothing to do with them.

We are not apprised whether Collins still retains his hackman's license.

And the plaintiff herein further proved by the admission of the defendants, by their counsel, that the defendants were the publishers, Editors and proprietors of the Chicago Daily Times, the Newspaper in which said article was published, and that defendant Matteson was the local editor, and wrote the article in question, the plaintiff thereupon rested his case - which was all the testimony then offered on the part and behalf of said plaintiff.

And thereupon the following named witnesses in the respective order hereafter named, were severally produced, examined and sworn,

on the part and behalf of said defendants, who thereupon respectively testified as follows—

Testimony for the Defense

Egus Keeler sworn— testified as follows—

I am a deputy sheriff and constable in Chicago—knew the plaintiff in 1855 and 1856. his business was that of a hackman— and part of the time he ran an "express wagon" for baggage— He also kept a boarding-house about that time— I know what his general reputation was for honesty and probity prior to Dec, 24 '56. It was bad.

Q "were there any reports current, prior to that time, in regard to his being generally suspected of theft and robbery?"

Objected to by plaintiff. The court decided the interrogatory to be admissible, under the declaration, wherein the plaintiff alleges that he "has never been guilty of, nor suspected to be guilty of, theft, robbery, or any such crime"— (Authorities cited— 4th 13th 14th & 15th Ill. and 2nd Gillman)

Exceptions taken by plaintiff.

Witness— There were such reports— There was a strong suspicion, generally entertained, that he stole trunks— Q "Was there a general report current that he was guilty of robbery?" A "There was— the general report at that time was, that he was a thief and a robber. that he stole trunks from the railway depot— He was then a hackman— I was a policeman then— and was stationed at

the depot - near where Collins lived -

Cross examination by Mr. Arnold - Q. "Were you a policeman under the Dyer administration?" A. "No, sir, I was a ward constable, elected by the people - I do not recollect the names of persons, I heard speak of Collins -

William M. Douglas, sworn -

I am a deputy sheriff and policeman - I have been connected with the police department of this city, for three years - I am acquainted with the plaintiff John Collins - was acquainted with his general reputation in this city, prior to December 24th 1856. know what that reputation was - it was that of a thief - this was his ~~general~~ reputation among the people in the neighborhood, of the depot, where he lived - He had a hack, and I think a baggage wagon -

Q. "Were there any reports current prior to December 24th 1856. in regard to his being generally suspected of theft and robbery?" A. "There were." Q. "What were those reports?"

Objection raised by counsel for the plaintiff - The court decided that the witnesses could only be asked generally - as to what the reports were - not specifically as to the particulars or details of the facts connected with any particular crime, with which report charged him - that the witness could only state generally what the report was - To which decision of the court, the defendant by

his counsel, then and there excepted -

A. "There was a general suspicion current at that time, that Collins was a thief, and a robber also - He lived on Sherman st. above Van Buren street -

Cross-examination by Mr. Arnold. Q. "were you a policeman under the Dyer administration?" A. "I was not - I was a police constable" Q. Can you name any of the persons whom you have heard speak with reference to defendants character?" A. "Yes - Mr. A. Phelps was one, whom I heard speak of him in 1856. Owen Mr. Blosky was another. Mr. Blosky was a "runner" at that time - Mr. Hobbs who kept the Buffalo House, was another - Patrick Smith was another - I have heard others speak of him in the same way, but I cannot now recall their names - Direct - there were others - Joseph Kellogg D. W. Swan -

My residence is at No 98. Jackson street - I have been a rail-road agent for the last three or four years - I am acquainted with the plaintiff John Collins - knew him down to August 1st 1856. at which time I went East. He drove a baggage wagon when I first knew him - I knew his general reputation prior to August 21. 1856. it was bad, very bad - Q. "Were you there any reports current prior to December 24th 1856. in regard to his being generally suspected of theft and robbery?" A. "There were." Q. "What were those reports?"

Same objection by plaintiff sustained by the court, and exceptions by the plaintiff.

Answer— He was generally suspected of stealing trunks, and passengers baggage—

Cross examined by Mr. Arnold— I have heard Mr. Henry E. Patterson, Mr. Keeler, and a good many others speak of Collins— Mr. Patterson was depot master— he is not here now— I have heard Mr. Patterson speak of him a good many times— he usually did so whenever anybody complained of losing trunks or baggage—

Albert Cone D. W. sumn—

I have been engaged in the Michigan Southern railroad depot for four years— was acquainted with John Collins (plaintiff) in 1856. knew his general reputation for honesty and probity— it was not very good— Q. "Were there any reports current prior to Dec. 24th 1856. in regard to his being generally suspected of theft and robbery?" A. "There were— he was generally suspected of taking trunks, which did not belong to him"

Cross examined by Mr. Arnold— I was acquainted with the defendant (Collins) for about two years prior to December, 1856. Mr. Patterson, the depot master, was one whom I heard speak of Collins as a robber— My business was to take general charge of the depot— I have been a friend to Collins— but suppose I have to speak the

truth - I am still friendly to him -

Cyrus P. Bradley D. W. Swan -

I have known the plaintiff Collins, since 1855. I was Captain of Police in that year - I know what his general reputation was at that time - it was very bad - Q. "Were there reports" (as above) A. "There were - he was generally suspected among those I talked with, that he would take things that did not belong to him - These suspicions in regard to him, were generally during the year I was Captain of police - among those with whom I talked - mostly policemen - My means of knowledge in regard to these matters were the same - I suppose, as those of any other detectives - we make use of all means to find out who is stealing - I never heard any one speak of him except the witnesses who swore for him in a case, in which he was tried for stealing trunks, who did not speak in the terms I have used - Q. "Do you know whether there was, or was not a report current in regard to the plaintiff having got himself discharged from accusation by suborning witnesses?"

Objected to by plaintiff's counsel, and objection sustained by the court, to which decision of the court, counsel for defendant then and there excepted -

Cross examination - The majority of those I heard speak of him were policemen - but not

all— Collins lived on Sherman st. near depot—
Don't know that I talked with any one in
that neighborhood except those I kept station-
ed there—

Henry Shockely sworn—

I was a policeman in 1856 knew the
plaintiff Collins— I know what his general
reputation was prior to December 24. 1856. it was
bad— He was in the hack business— Q. "Were there
~~was~~ any reports." (Same as above) A. "There were."
It was the general report that he was a thief
and robber— this was his general reputation— This
report was most current in the neighborhood of
his residence— near the Michigan Southern
railroad depot—

Cross examination Q. "Were you a police-
man under the Tyler administration?" A. "I was"
Q. "Are you on the police now?" A. "I am not—"
Q. "Have you heard any person, not a policeman,
speak in regard to the reputation of the plain-
tiff, as a thief and robber?" "I have heard Patterson
I cannot now call to mind names of others—

J. W. Connetts, sworn—

I was Captain of police in 1856. I
have known Collins since about the first of June
1856. I know what was his general reputation for
honesty prior to December 24/56. it was bad— his
general reputation was that of a thief, among all
I heard speak of him— His reputation, ^{was general} among the

police - heard others speak of him - Q. Were there reports. (same as above) A. There were - it was generally reported that he was suspected of robbery and theft -

Cross examination I was Captain of police under the Dyer administration - I ~~had~~ have heard others, besides Dyer policemen, speak of Collins - some who were policemen under the Boone administration -

Andrew Aiken sworn -

I have been a Justice of the peace for four years - I know the plaintiff Collins - have known him since the summer of 1855. when Boone was Mayor - I cannot say my knowledge of his character was a general one - I knew his general reputation prior to December 24/56. it was bad, from general reports - Q. Were there reports. (same as above) - There were - it was generally reported that he was a thief and robber - The reports I more particularly allude to, were current in the fall, or latter part of the summer of 1855. The general report was that he was in the habit of taking trunks and passengers baggage which he had no right to take -

Cross examined - The reputation I speak of, was among police officers -

Calvin D'Wolf, sworn -

I have lived in Chicago 20 years and over - have been a Justice of the peace

for the last four years - am such still - was police magistrate in 1856. and part of 1857. have known the defendant Collins for three years or more - I knew what his general reputation was, prior to December 24/56. it was uniformly bad - G. "were there general reports" (same as before) A. There were such reports - I know it was the general report among the police, that he was suspected of stealing and robbing - I cannot say that these reports were most current among his neighbors - I should say they were most current among those who were after him - In regard to his general reputation, I should say it was most generally bad among his neighbors, and those who knew him outside of the police force -

Cross-examination - Most I heard speak of him were police officers and detectives - Can't name but one other person than policeman now - but I have ^{heard} others speak of him besides policemen - I can name but one other -

Paul H. Dennis sworn -

I have resided in Chicago nearly three years - am local mail agent for the P. O. Depot - was formerly a detective policeman - I have known John Collins (plaintiff) for about two years - Knew his general reputation prior to Dec. 24. 1856. from information - it was not good - it was generally reputed that he was a thief - I know of a report being current that he was generally suspected of

robbery

Cross-examination

I cannot name any person except policemen, and detectives, whom I have heard speak of him—
Charles F. Childen sworn

I know the plaintiff, John Collins—
I have been a policeman for three years— I knew Collins in 1856. prior to Dec. 24. know what his general reputation was— it was bad— It was generally suspected that he was a scaly fellow— that he took things that did not belong to him— or in other words, that he was a thief— He was in the hack business, and had a baggage wagon at one time—

Cross-examination— I think I have heard persons not on the police, speak of him— but I cannot ^{now} recollect their names— I presume I have heard his character spoken of, by a dozen or more policemen— I was a policeman under Dyer— am now under Wentworth—

James Finnean, sworn

I live in the North Division— was a policeman in 1856. knew Collins— have known him four years— his business was hack-driving— I knew his general reputation among those acquainted with him— it was very bad— It was generally reported that he was dishonest, and that he was suspected of taking things ^{which} ~~that~~ did not belong to him— I know it was generally reported that he was suspected for robbing—

Cross-examination I think I can name some of the persons, besides policemen, I have heard speak of him - Richard Leary, one of Collins' friends, is one - I heard him speak of Collins as a thief on the morning before he, (Collins) was arrested for the Blanchard affair - it was near the Commercial Hotel - James Mellen is another - Edward Conley is another - I heard speak of Collins in 1855, as a thief - Conley used to be a passenger runner at the cars.

Defendants proposed to offer in evidence the "Chicago Journal" newspaper of Tuesday, Dec. 23rd 1856. published in Chicago - with the view to prove that substantially, the same statements, as those contained in the libel in controversy, had been previously published in that paper, and thus had become a part of general public rumour, said evidence being offered in mitigation of damages -

Plaintiffs' counsel objected, and the court sustained the objection, to which decision of the Court, Counsel for defendant then and there excepted -

Henry M. Flint, sworn -

I am commercial editor of the Chicago Times - I have examined the files of that paper, and find that the article (in controversy) was not published in the weekly edition

of the Times

Cross examination I have no recollection of any retraction having been made - I cannot state the circulation of the daily edition - then wide-sent into nearly all the states - it might have been 3. or 4000 then, including exchanges - it is much more now, I suppose - Daily circulation principally confined to the city -

Direct examination resumed City items of general interest are usually published in both daily and weekly editions - if complaint is made of any article in the daily, it is suppressed from the weekly edition -

Charles Hodgson sworn -

I am acquainted with the plaintiff Collins - have known him for two years and a half - knew his general reputation prior to Dec 24. 1856. among his neighbors, and those who knew him - it was bad - I know of his being generally suspected of theft and robbery -

Cross examination I have lived in Chicago twenty-one years - have been a policeman - I cannot now name any particular person whom I have heard speak of him, outside of the police department - my duties on the police were principally about the office, to receive complaints, and so forth -

Abraham Smith, sworn -

I have known the plaintiff Collins over two years - was acquainted with his

of by men, who came to make charges against him.
Direct examination - These charges were mostly made by strangers who were passing through the city - Cannot say I ever heard his neighbors speak of him -

And thereupon the plaintiff then introduced the further and following named witnesses who being respectively sworn, testified as follows, to wit -

Rebutting Evidence -

Anton Berg, sworn, testified as follows -

I keep a grocery in Wells street - have known the plaintiff, John Collins, for four years - I know nothing more of him than my business acquaintance with him goes - he has been in the habit of buying groceries of me, and has always paid what he owed - Q. "Do you know what his general reputation was among his neighbors, prior to Dec 24, 1856?" A. "I do not" -

Edward Conley, sworn -

I know the plaintiff, Collins - I never said to James Kinican that he was a thief - not in any way that I can remember - I have known Collins for three or four years - have lived near him for the last 18 or 20 months - Q. "Do you know what his general reputation for honesty was, prior to Dec /56." A. "Some say he is a rogue, and some say he is an honest man" -

Q. "Do you know what his general reputation was?"
A. "As far as I am concerned, he was an honest man" -

Cross examination - I have answered that as far as I knew, his character was good. Some said he was a rogue, and some said he was not. Those who spoke of him as a rogue, spoke with reference to some trunks, which were found in his house. I have heard some speak about his stealing trunks, but they said he was innocent. I kept a boarding house in 1856. did not run a baggage wagon, but a wagon for passengers. Collins sometimes brought baggage to my house.

John R. Bates sworn.

Keep eating - saloon 154. Wells st. have known Collins since June 1855. Have had business transactions with him. Have a knowledge of his general reputation. Should think it was good as far as I know.

Cross - Kept "Shelly House" for about twenty months. He occasionally brought passengers to my house, and took them away again. Collins lived four doors from me. Never heard any report of him till he was arrested a year ago last winter, heard some speak of him at that time.

Robert Vincent sworn.

Have known Collins over 3 years. Knew his general character for honesty prior to Dec. 24/56. it was good. Heard many speak of him.

Cross - Boarded with Collins three months in fall of 54. At present I am sheriff's custodian.

of property - Have not been collecting witnesses for him - went for Stuart and Adams only - Have been intimate with him - have visited him - I never heard any one speak to his prejudice -

Thomas D. Fox, sworn

Am a policeman - was a policeman in 1856. have known Collins over 2 years - Am acquainted with his ^{general} good character for integrity - it is good -

Cross - I used to drive omnibus for Walker - Collins drove a hack - saw him often at the R. R. depot - never heard of the charges of theft or robbery against him, till I read them in the Times -
William Cain, sworn -

Have known Collins 3 years - live on Buffalo street - am a mason - I rented part of a house of him - I was acquainted with his reputation among his acquaintances - it was good -

Cross - Rented part of his house for 11 months - knew nothing more of him than saw in my own dealings with him - I am a mason by trade -

John Carpenter, sworn - Am acquainted with Collins - knew his ^{general} good reputation prior to December /56 - it was good - I had dealings with him, and had occasion to enquire about him - found his character good -

Cross - Collins bought milk of me - I live in West Chicago - am dairymen - The occasion of my enquiry about him, was this - he sent for me to go

his bail, when he was arrested for taking trunks- I thought I would ask about him before I did so- I did not go his bail- the reason I did not was, that Capt. Bradley told me if I bailed him out, he would be immediately arrested upon another charge-

Direct- Did not Bradley tell you there would be no use in bailing him, because he was bound to keep him in jail until after the election? A. I believe he did say some such thing

Cross. This was in December, '55.

Mark Clifford, sworn-

Stone cutter-lived in Chicago since 1855. know Collins general character-it is good-

Cross- Boarded with him when first came here-

Edward Conigan sworn-

Lived here ten years blacksmith- know Collins- knew his general character prior to Dec. 1856. was good-

Cross- Am blacksmith- Collins got his horse shoeing and carriage-mending done at my shop- always paid his bills-

Aaron Phelps

I keep Ohio Exchange- have lived in Chicago 5 or 6 years- I know Mr. Douglas, police officer- I don't recollect saying to him that plaintiff was a thief- I have known Collins three years- I

never heard anything against him, till he was arrested —

X That was two years ago this spring — don't recollect saying any such thing — I had not that opinion of the man — His arrest was frequently talked of — there was a report that he had stolen those trunks — Heard it spoken of as a pretty hard scrape — very often spoke of at my house — outside of police —

This being all the testimony introduced and offered in said cause, on the part of said plaintiff and said Defendants. The Court at the request of said plaintiff then gave the Jury the following Instructions, on the behalf of said Plaintiff, to wit —

Given

1. If the jury believe from the evidence, that the defendants published the Libel as charged in the Declaration, then the plaintiff is entitled to recover —

Given

2. The evidence offered by the Defendants, in regard to Plaintiff's general character, is evidence not in justification of the alleged libel, but excuse or extenuation, and for the purpose of diminishing the amount that the plaintiff is entitled to recover — If the plaintiff has proved the publication of the libel as alleged, then he is entitled to a verdict — and the amount of that verdict, is to be determined by all the evidence in the case.

Given

3. In this case, the Defendants, by their plea of not guilty, admit that the plaintiff is not guilty of the charge alleged in the libel, as charged in the Declaration - all the evidence admitted to the Plaintiff's general character, and the existence of general reports, and rumours, was received, not for the purpose of showing Plaintiff's guilt, his innocence being admitted - but this evidence was received in excuse, and in diminution of the amount of damages, and for no other purpose -

Given as qualified

4. If the jury believe from the evidence, that the libel was published as charged - then the Plaintiff is entitled to recover - The amount of the recovery is to be determined by all the evidence and circumstances proved in the case - and in determining such amount, the jury will consider the character of the charge, the general reputation of the plaintiff at the time of the publication complained of - whether the defendants had an opportunity to retract the charge - whether maliciously made, and persisted in - or whether made as public journalists, and for laudable purposes, and without malice - and also the Plaintiff's general character - and all the facts proved in the case, having a reference to this subject -

To the giving of which said Instructions, the defendants, by their counsel, then and there

excepted -

And thereupon, at the request of the defendants, the Court then gave the jury, the following instructions, on behalf of said Defendants, to wit -

Given

1st If the jury believe from the evidence, that the publication in question was made without ill-will or malice towards plaintiff, and that their sole motive was one of public duty, to spread before the public, intelligence which might prove of personal importance, to their protection as members of the community - then they should only find such actual damage, if any, which Plaintiff sustained in consequence of such publication -

Given

2nd In estimating the damages which should be awarded to the plaintiff, it is proper, and the Judge ought to consider the general character of the plaintiff - and if his character is found to be bad, then it is a conclusion of law that he cannot be as much ^{injured} ~~exposed~~ as if it were unblemished, and it is for the jury to consider how much character he had to be injured and how much it actually was injured by the publication in question, and whether or not, the defendants were actuated by malice, and to award accordingly -

3rd General character is the reputation which a man bears among his neighbors - and those who know

him - and in the investigation as to character, no particular facts or acts, of a man's life or career, can be enquired into or testified to -

Given

In this case the Defendants have a right to impeach the plaintiff's general character, by giving evidence that in the opinion of neighbors, and those who know him, his character is bad, and upon that question, facts or particular acts, could not be given in evidence by defendants -

4th The character of the plaintiff may be enquired into, or impeached by general evidence, without any special plea or notice from the opposite party. The law presumes that a plaintiff is always prepared to vindicate and defend his general character, and no special plea or notice is necessary to authorize the defendants to introduce evidence impeaching that character - And if the jury shall find from the evidence, that there was no malice, and that at the time of the publication in question, the plaintiff's general reputation was bad, and that he sustained no damage whatever from the same, then the plaintiff is only entitled to nominal damages -

Given

5th The jury should consider the degree of malice which actuated the defendants, or any of them - and to determine this, the jury may consider all the circumstances in evidence and also the probable

Given

motives and purposes, of the defendants, in making such publication - and the defendants should only pay damages, beyond actual damages, in proportion to the quantum of actual malice, by which they were actuated -

Given
6th To determine the question of actual malice, the jury may consider from the testimony, whether or not the defendants acted, or supposed they were acting in the discharge of a public duty, or of their duty as journalists, in publishing the article in question -

And thereupon the jury retired under the charge of an officer, to consider of their verdict -

The jury retired on Tuesday evening, the 22nd of December, and upon coming into Court, on the following morning, at the opening of Court, reported their inability to agree upon any verdict, when they were allowed to separate until 11 o'clock of same day, by the consent and agreement of the parties, for refreshment, the parties agreeing to waive all exceptions to such irregularity - The jury again were brought into Court, at 2 o'clock - of same day, and again expressed their inability to agree upon a verdict - whereupon the Court stated, in the presence of the parties, and their counsel, and without objection, That this trial had occupied some time - over two days - that the docket of the Court was

40

exceedingly crowded with business - that the expense of such a trial was very great, as well to the parties as to the county, and that the parties were desirous that the jury should agree upon a verdict, if they could do so - some remarks to the same effect were then made by the counsel for Plff. And thereupon the Court instructed them again to retire to consider of their verdict - whereupon, after an absence of some time, I say about 2 hours, further consultation, the jury come in, with the following verdict, to wit -

We the Jurors find the Defendants guilty, and assess the Damages at \$358.

Carter, Lamb, Fireman

And thereupon, the defendants by their counsel, entered a motion for a new trial, in the words and figures following, to wit -

Cook Co Circuit Court.

James W. Sheahan

D. Cameron

Andre Matteson.

ads

John Collins

Libel -

And now comes the defendant and moves the Court for a new trial - for the following among other reasons -

1st The Court erred in giving instructions of plaintiff

State of Illinois, }
COUNTY OF COOK. } S. S.



I, WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of *papers remaining on file & all proceeding had*
enteries of record upon the files & index
in a certain cause *late* pending in said Court on the
Common Law side thereof, wherein *John Collins*
was plaintiff *vs* and
James W. Sheehan Et al *even* defendants.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this *twentieth* day of *April* A. D. 18*58*

W. L. Church
Clerk.

to the jury-

2nd The Court erred in admitting the evidence of Mr. White to go to the jury, as not relevant to the case-

3rd The Court erred in excluding evidence of the defendants from the jury-

4th The verdict is against evidence, and the damages are grossly excessive, under the circumstances proven-

5th The verdict is against Law-

6th The Court erred in excluding evidence of general reports affecting Plff's general character-

7th The evidence in the case warranted only a verdict for nominal damages-as no actual damage was shown-damages should be only commensurate with the injury received-

8th The Court erred in telling the jury, that they ought to agree, that a failure to agree, was a great expense to the County-He did not wish to try the suit again, and the parties desired an agreement and would be satisfied with any verdict they should render"

9th The discovery of new evidence since the trial not cumulative-Dyers and Andrews-

10th Other reasons

J. Lyle King-

G. L. Hoynes

Counsel for

Defendants.

which motion for a new trial, after arguments of counsel, the Court then and there overruled to which order, overruling said motion, the defendants, by their counsel, then and there excepted and prays the Court here to sign and seal this their Bill of exceptions which is done—

George Manium 

Judge of 7th Judicial
Circuit, Illinois

James W. Sheahan

David Cameron

Andrew Hutton

John Collins

Ills Superior Court

Assignment of Errors

Error to Court & Court Record

And now comes the said Plaintiff in

Error by saying that the Attorneys are shown to the Court fees that in

the Record of the Proceedings in this Cause and the trial in the

ancient Court show there is manifest error in this to wit:

1st The Court erred in granting the motion of Plffs for a new trial.

2^d The refusal of the Court to permit the testimony of Bradley & other witnesses as to the character of the reports in general circulation affecting the plaintiffs character in mitigation of damages.

3^d The refusal of the Court to exclude the testimony of the witness White in relation to the demand for a retraction of an article other than the libel upon the Record.

4th The refusal of the Court to permit the defense to show other newspapers publications to the same extent as the Libel in mitigation of damages.

5th The Instructions of the Court that by the plea of the general issue the Plffs in error admitted the innocence of the defts in Error and that he was not guilty of the charge contained in the article, when the only issue raised was by such Reading was our own guilt or innocence of the publication charged against us.

6th The Court erred in assuming the fact by the 14th instruction of Plffs that we had an opportunity to retract the charge

43. when the evidence shows that a demand was only made

44 for retraction of an entirely different article than
that charged in the declaration

Byrne, King & Butler
for App, minor

The appellee says there is no error,
& so says for an affirmation
of the judgment. CC -

Arad & Cameron
for Appellee

John Collins
175 vs.
James H. Sheehan & Co.

Record

James A. Sheehan & Co.

vs

John Collins

Filed Sept 21, 1888
Return
C. H.

H. S. P.

Wm. Miller & Son
Depts atty

Filed for Record \$ 10. ⁵⁰

Ill. Supreme Court

3^d Session

Cameron & Sheehan

Attys

John Lester,

Appeal from Cook Co

Circuit Court April

Term 1858

It is hereby dispensed by the Court that all irregularities in the Record as to mode of taking appeal are hereby waived on account of the omission of the Court below to incorporate the names of the securities Frederick Conley who signed the appeal Bond who were approved by the Court in the order for the allowance of the appeal

C. J. Cameron
attys for ~~defendant~~

Chicago April 29, 1858.

Suprem 65 & 66th

Ill

Cameron & Sheehan

- 4 -

How Collins -

Supremation

Sheehan & Cameron

In Supreme Court Ontario April 1888.

17.

John Collins

Libel.

1

The Court refused to allow Bradley to introduce for defence to prove under the general issue in mitigation of damages the character of general reports in relation to Plff, character as induced a belief that the words were true.

Queen v. Le Kew 14 Ell. P. 460.

Regina v. Leatob. 2 Gil. 40.

Commonwealth v. Leatob. 15 Ell. 312

It was admitted for the purpose of showing the gross animosity of defendants which in these cases is the controlling consideration. 15 Ell. 312.

II The Court erred in excluding from the jury other newspaper publications containing the same or similar charges with a view to disproving malice. The rule of Law is, that when a defendant does not satisfy he may mitigate damages in two ways. 1st by showing the general bad character of Plff, and 2^d by showing any circumstances which tend to disprove malice.

Regina v. Leatob 2 Gil. 40.

2 Freeman's Ell. Sy. 1460. Citing -

4 Wend. 659. 1 Pick. 16.

3 Pick 378. 8 Wend 573.

13 Wend. 9 - 24 do. 105

5 Coner 499

7 do. 630

III But in this case the declaration contained the allegation - that ~~defendant~~ ^{Plff} was not guilty nor ever suspected to be so or.

In such cases the rule expressly laid down is that defendant may show that he was so suspected 2 Greenleaf Ev. Sec 424

See 275 - Paddock v. Salisbury 2 Conn. 811
Kop. H. Lapham 14 Mass. 275 - Stone v. Cammiff
7 Metcalf 86 - Dole v. Lyow. 10 Johns
447 -

Greenleaf lays down the rule expressly that to disprove malice on a publication by a newspaper that defendant has the statement from a third person or copied the statement from another newspaper which had published similar charges. 2 Greenleaf on Ev. Sec. 424

The defence proceeded on the ground that there was no actual malice in making the publication, but that it was made bona fide as public journalists with laudable motives, for instigated ends, and with no intention to defame the Plff.

See Kee v. Dugally. 4 Scam. 32.

2 Greenleaf Ev. Sec. 424.

In Pennsylvania, evidence may always be given to show that the slander was devised by another & published to defendant, who only repeated it upon the

publication made by others

See note 1 started on Slender P. 300. Citing
1 Bury 90. Runkle & Meyer. 3 years 519.

IV_ But the Court erred in telling the Jury that
the defendants by pleading the general issue admitted
the innocence of the Pff of the charge and that
he was not guilty thereof.

The Plea of the general issue puts in issue
only the guilt or innocence of the charge made agst
the defendants & the facts upon which the plaintiff
bases his right to a recovery.

1 started on Slender. P. 402.

2 " on Evidence. P. 466.

Nor is the case of Regnier 24 Leach 240
a decision to the contrary. it being merely arguendo
in the case cited by the Judge & only authority in that
case.

Greenleaf says (2 Greenleaf Cr. sec 424) - that under
this issue the defendant may show that the charge
was occasioned by the misconduct of the Pff either
in attempting to commit the crime, or in leading
the defendant to believe him guilty, or in contemporaneous-
ly speaking of the defendant with opprobrious language
or that it was made under a mistake which was
forthwith corrected; or that he had the libellous statement

from a third person, or being the proprietor of a newspaper that he merely copies the statements from another paper &c.

The policy of the Law will not compel a party to make admissions de hors the record, the defence may not choose to take upon themselves the onus of proof in establishing the criminal guilt of a party in a civil proceeding when the proof is not at hand or when he cannot be permitted to be sworn as a witness on the trial. There are many reasons why the policy of the Law would not extend such an admission upon a plea of not guilty because the defendant did not choose to attempt a justification & enhance the amount of damages -

Chicago Apr 24, 1838.

J. H. Poyford
Counsel for
Defendants

✓ The Court refused to exclude the testimony of witness White who testified as to a demand made for a retraction of another & different article than the Libel - & such refusal aggravated damages - A refusal to retract shows the quarrel & tended to prove malice, if such refusal had been made as to the publication declared upon, but not being so made, the testimony was entirely irrelevant & improper -

195-167

Ills. ant. conts

at Ottawa

Apr 2. 1838

Shenkin & al.

John Collins.

Poyford

Emm -

Libel