

No. 12892

Supreme Court of Illinois

Stumps

vs.

Kelly, a minor by
her next friend,

IN THE SUPREME COURT.

BARBARA STUMPS,

Appellant,

vs.

SUSANNAH KELLY, a minor, by
her next friend, PATRICK
W. KELLY,

Appellee.

Appeal from the Cook County Court of

Common Pleas, Cook County, Illinois.

RECORD.

This was an action on the case, brought by the said appellee against the said appellant, at the September term, A. D. 1857, of the Cook County Court of Common Pleas.

1 The said appellee, by her attorney, filed her precipe for summons in said cause
2 in the court below, on the 31st day of August, A. D. 1857, and thereupon summons
3 issued out of said court in an action on the case, returnable at said September term,
4 A. D. 1857, of said court, which was duly served.

4 Declaration was filed by the said appellee, by her next friend, September 1st,
5 1857, in said cause, the first count of which declaration sets out, that appellant
wrongfully and injuriously, theretofore, did keep a certain red and white cow, well
knowing that the said cow was accustomed to hook, etc., and which said cow after-
wards, and while so kept by said appellant, to wit, on the 11th day of August, 1857,
6 did attack and push with her horns the said appellee, and greatly worried, bruised
and injured the shoulder and arm of the said appellee, and she became sick, etc., for
a long time, and was injured in consequence, in her health and constitution, and was
prevented from pursuing her ordinary avocation, etc., and was put to great expense,
etc., in and about being cured, etc.

7 The 2nd count is similar to the 1st, only averring that appellant, knowing the
vicious propensity of her cow, and that she was accustomed to hook mankind, did
not restrain and confine her cow, but suffered her to run at large, and that said cow,
on the 11th day of August, 1857, attacked and hooked said appellee, and said
appellee was greatly injured, the same as in the first count, to the appellee's damage,
\$2,000, etc.

(Signed)

P. W. KELLY, *Prochein amy.*

8 On the 15th day of September, 1857, the appellant filed the plea of the general
issue to said declaration, and the appellee, by her attorney, J. Collins Wicker,
joined in the issue to the country.

9 Afterwards, on the 11th day of December, 1857, being one of the days of the
November special term, 1857, of said court, said cause was submitted to a jury
10 for trial, and said jury, on the 12th day of December, 1857, brought their verdict into
court, finding the issues for the appellee, assessing her damages at \$500.

RECORD.

10 And thereupon appellant moves the court for a new trial, which motion was taken under advisement by the court.

11 Afterwards, on the 3rd day of April, 1858, the same being one of the days of the February term of said court, the said court overruled the said motion for a new trial, and entered judgment therein on the said verdict of the jury; to which decision of the court overruling said motion for a new trial, the said appellant then and there excepted, and prayed an appeal to the Supreme Court of the State of Illinois of said cause, which was then and there allowed by said court, upon said appellant filing her appeal bond in \$700 with security, to be approved by the judge of said court, and that appellant have ten days' time from that day to file her said appeal bond, with her bill of exceptions.

12 And afterwards, on the 10th day of April, 1858, the appellant filed in the office of the clerk of said court, her bill of exceptions, which is in the words and figures following, to wit:

COOK COUNTY COURT OF COMMON PLEAS,
November Special Term, A. D. 1857.

BARBARA STUMPS,
ats.
SUSANNAH KELLY, by her next
friend, P. W. KELLY. } CASE.

12 Be it remembered, that on this 12th day of December, A. D. 1857, the same being one of the days of said term, this suit came on for trial before the said court and a jury, when the said plaintiff introduced, as a witness on the stand,

12 Mrs. Ann E. Myers, who testified in said case as follows: That she was very slightly acquainted with defendant, and well acquainted with Mr. Kelly and family; that she resided on Peck Court in August last, and has resided there two years next April. Defendant resides opposite the house where I live. I have seen two or three cows about her premises, and know she has got them there. In April or May last, I was going into State street to a grocery, and a cow chased me; the cow was red and white, and started from Mrs. Stumps' barn; I ran into the tavern called the "Hen and Chickens," a man came out and drove the cow off, and then the man went back, and then I started again, and the cow again gave chase to me and I had to run again into the tavern. I also saw the same cow chase, at another time, a lady, and she fell. The cow that chased me is a red and white, or a yellow and white. I have seen the same cow that chased me around Mrs. Stumps' barn since. I saw the child, the plaintiff, after she was injured; and her shoulder and face were badly injured. There was a sore on her shoulder, and it looked pretty bad. The child was between four and five years old.

13 Mrs. Swartz, the witness next introduced by plaintiff, testified as follows: That she was acquainted with Mrs. Stumps, and formerly lived in her house. Mrs. Stumps then had a cow, yellow, with white spots; she does not know that the cow was ugly. The cow hooked her little child but did not hurt it much, and Mrs. Stumps knew it.

On cross-examination, she stated that the children were in the habit of playing with that cow.

13 Louise Sherman, the next witness introduced by the plaintiff, testified: That she was fifteen years old; that last winter, she and Mary Russel were coming from school down Peck Court, that she saw a cow, red and white, near Mrs. Stump's house, and the cow chased us, and I ran into Mrs. Stumps' house, and the cow got Mary Russel against the barn, and Mary Russel took hold of the cow's horns; and Mrs. Stumps came out and drove the cow away.

14 Mary Russel, also introduced by plaintiff, testified as follows: That she was thirteen years old; knew where Mrs. Stumps resided; that she and Louise Sherman, last winter, were coming from school, they saw a red and white cow near Mrs. Stumps', and Louise said she was afraid of her, and ran into Mrs. Stumps' house; the witness

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said she was not afraid of the cow, and went on, and the cow attacked me and ran me up against the barn. I seized the cow by the horns, tried to turn her away; she tore my clothes some. I was dressed in red. Mrs. Stumps drove the cow away.

Malicia Kelly, plaintiff's witness, testified: That she was the daughter of P. W. Kelly, and sister of plaintiff, and going on fourteen years old; and that Mrs. Stumps has two cows about her premises. I saw Louise Sherman a screaming and knocking at Mrs. Stumps' door, and Mrs. Stumps came, and Louise asked her if that is your cow hooking Mary Russel? and Mrs. Stumps said yes, and drove the cow off. The cow once hooked me in the back when I was carrying a baby, and tore my dress. Mrs. Stumps saw it, and talked to me of her boys in German, and laughed, and I went into the house a crying.

15

William F. Sands, introduced by the plaintiff, testified: That he resided in Peck Court, and knew the parties by sight; also, that he had seen two cows around Mrs. Stumps' premises. I knew the cow, red and white, to hook the child, plaintiff, and throw her up, I should think, six or eight feet, and she fell on the sidewalk. I told Mrs. Stumps that if that child was mine, I would be damned if I would n't cut that cow down. Mrs. Stumps made no reply to my remark, but said something about brats. I have frequently seen the cow on sidewalks and streets.

Harry Knowl, a witness on the part of the plaintiff, testified: That he knew Kelly and Mrs. Stumps; that he once saw the cow chasing two children, and told Mrs. Stumps that she should not let the cow run out; she said it was none of my business.

Dr. Hitchcock, a witness on the part of said plaintiff, testified: That he was called, professionally, to visit a child of Mrs. Kelly, who was apparently injured by some contusion; there was very little external marks—the arm was discolored, but the principal injury appeared to be from concussion, the head was some injured; it was under my care some two or three weeks, though I only made one visit and left it medicine to take. In about two or three weeks, the child came to my office, and I gave it more medicine. The symptoms appeared to be congestion. When I was called, the child lay upon a bed, and complained when I attempted to turn it, apparently from being internally injured. The child received no permanent injury.

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Mr. Hauser, plaintiff's witness, testified: That he had seen a red and white cow about Mrs. Stumps' barn, and she has been known as Mrs. Stumps' cow. He also testified that the place where Mrs. Stumps resides, and of which she claims to be the owner, was worth between \$5,000 and \$6,000.

And here the plaintiff closed his case.

The defendant then introduced, as a witness,

Miss Brandt, who testified: That she knew the parties, and lived near by them at the tavern called the "Hen and Chickens;" that she recollected when Susa, the plaintiff, was injured last August; that Susa came into their house about half an hour after she was hurt, talked the matter over and said her parents did not then know it. The next morning I saw Dr. Hitchcock go to Mrs. Kelly's, and soon after leave the house, and in about ten minutes after the Dr. left, I saw Susa, the plaintiff, go around our house with a basket, into State street, and soon after, I saw her returning towards home with a basket of shavings. I saw her, the plaintiff, out of doors almost every day thereafter, playing about.

The defendant then introduced

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Mrs. Cole, who testified: That she saw the plaintiff in about half an hour after the injury, away from her house, at the "Hen and Chickens." I saw her out the next day, and frequently thereafter. I have lived near Mrs. Stumps the past two years; know the cow in question, and have never seen anything vicious about her.

The defendant then introduced, as a witness,

Peter Stumps, who testified: That he lived with his mother, the defendant; that

17 defendant was not the owner of the cow in question in August last, nor never was the owner of the cow in question; that the cow in question was given to him, this witness, by one E. Peck, as a present, when she was a calf; that he had raised her himself, procuring all her feed, and has always had the absolute control and possession of said cow, keeping her on and about the premises where he himself resided.

On cross-examination, witness stated that he lived with his mother, the defendant, and paid her nothing for his board; that he did not do any chores about the house; that he was a shoemaker by trade, and worked at his trade, and was 27 years old; that he had no interest in the premises, nor in the barn where the cow was kept.

Here the testimony on both sides closed.

The defendant then asked the court to give the following instructions to the jury, viz:

18 "If the jury believe, from the evidence, that the defendant, Barbara Stumps, was not the owner of the cow in question, at the time of the alleged injury, nor had not the control of said cow, but the same was under the control of another person, who could do as he pleased with said cow; then the defendant is not liable, and the law is for the defendant."

"If the jury believe, from the evidence, that Peter Stumps resided, at the time of the alleged injury, with his mother, the defendant, and that he owned the cow in question at that time, and kept her on the premises where he resided; then in law the possession of said cow was in said Peter, and the defendant is not liable in this action, and the law is for the defendant."

Which instructions were then and there given by the court.

The court also gave, on his own motion, the following instruction to the jury, viz:

19 "If the jury believe, from the evidence, that the cow in question was the property of the defendant, and under her control, or that she had the possession, control and management of the cow, with the assent of the owner, and that the defendant knew that the cow was vicious and accustomed to chase and hook people, and that the defendant, after she had such knowledge of the vicious character of the cow, permitted the cow to run at large, and that the cow, while so at large, hooked and injured the plaintiff, the jury should find the defendant guilty, and assess such damages as, under all the circumstances, you think right and just."

To the giving of which instruction, the defendant then and there excepted.

Afterwards, the jury returned the following verdict, viz: "We, the jury, find for the plaintiff, and assess the damages at five hundred dollars."

And thereupon, the defendant entered the following motion for a new trial:

BARBARA STUMPS, <i>als.</i> SUSANNAH KELLY, by her next friend, P. W. KELLY.	}	<i>Cook County Court of Common Pleas, November Special Term, A. D. 1857.</i> And now comes the said defendant, by C. B. Hosmer, her attorney, and moves the court for a new trial, for the following, among other reasons:
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1st. Because the verdict of the jury was against the evidence in the case.
 2nd. Because the verdict was against the law of the case.
 3rd. Because the damages were excessive, the child not having received any permanent injury.

C. B. HOSMER, *Defendant's Attorney.*

20 Be it further remembered, that on the 3rd day of April, A. D. 1858, the same being one of the days of the February term, A.D. 1858, of said court, said cause came

on for hearing, upon the said motion for new trial, and the court then and there overruled said motion for new trial, and entered judgment upon the said verdict of the jury. To which decision of the court overruling said motion and entering judgment herein, the said defendant then and there excepted, and prays the court to sign this, her bill of exceptions, which is done.

JOHN M. WILSON. [SEAL.]

And thereafter, on the said 10th day of April, A. D. 1858, the said defendant filed her appeal bond in the office of the clerk of said court, which was duly approved by the judge thereof.

The plaintiff assigns the following errors :

1st. Suit improperly commenced, by attorney filing precipe for summons for plaintiff, instead of the *prochein amy*.

2nd. Replication to plea filed improperly by an attorney, instead of by *prochein amy*.

3rd. Court below erred in giving on his own motion the instruction which he gave to the jury.

4th. Court below erred in not instructing the jury, under the evidence, to find for the defendant, as in case of non-suit.

5th. The verdict of the jury was against the evidence in the case.

6th. The verdict of the jury was against the law of the case.

7th. The verdict of the jury was against the instructions of the court, given to them on the part of defendant below.

8th. Court below erred in overruling the motion for a new trial.

9th. Court below erred in entering judgment on the verdict of the jury.

10th. The verdict of the jury was excessive.

C. B. HOSMER,

Attorney for Appellant.

Supreme Court
B. Stumps
vs
J. Kelly
Abstract

Filed April 21, 1869
L. Leland
Clerk

SUPREME COURT.

BARBARA STUMPS,

APPELLANT,

vs.

SUSANNA KELLY, by her next
friend, &c.

APPELLEE.

Appeal from Cook.

The plaintiff makes the following points and brief, in support of the errors assigned :

1st. There was no issue formed in this case, as the replication was signed by an attorney, and plaintiff below, being an infant, could not appear by attorney. This is merely technical, and the plaintiff does not rely upon this point, except the Court may consider the point, in case it should not deem the other points well taken.

2nd. The verdict is against the *evidence*. On this point the authorities are numerous. And we think the rule fairly deducible from all the authorities, is this, that if the verdict is so strongly against the weight of evidence as to show that there was some improper bias or gross misapprehension influencing the jury, so that their verdict shocks both the understanding and moral sense, then their verdict should be set aside and a new trial granted.

Shepard v. Buckhalter, 13 Geo. 443, a case in point.

Yale v. Yale, 13 Conn. 185.

Wendall v. Safford, 12 N. H. 171.

Thomas v. Hatch, 3 Sumner, 170.

Slocumb v. Lurty, 1 Hemp. 431.

Hunnewell v. Hobart, 40 Maine, 28.

Beecher v. Derby Bridge, &c., 24 Conn. 132.

Rochell v. Philips, 1 Hemp. 22.

Butler v. Livingston, 15 Geo. 565.

Long v. Lewis, 16 Geo. 154.

Keaggey v. Hite, 12 Ill. 99.

3rd. Also, where the finding of the jury is manifestly against the evidence, a new trial should be granted.

Scott v. Plumb, 2 Gilm. 595; 13 Ill. 697.

4th. A new trial will be granted when there is no testimony to warrant the verdict, or *where it is against the oath of the only witness who deposed as to the point in question*.

Tompkins v. Corry, 14 Geo. 118.

5th. Where the Court, on the trial of a cause, submits a question for the finding of a jury, on which there is no evidence, *it is error*.

Burut v. Fulton, 1 Jones Law (N. C.) 543.

35 Main (5 Red.) 150.

Fay v. Grimshaw, 10 Barb. S. C. R. 321.

Bethune v. McCrary, 8 Geo. 114.

Eames v. Blackhart, 12 Ill. 195.

6th. The damages in this case are excessive, and therefore a new trial should be granted.

Pratt v. Blakely, 5 Miss. 205.

Parker v. Lewis, 1 Hemp. 72.

Clapp v. Hudson River R. R. Co., 19 Barber (N. Y.) 461.

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Chapman

O.B. & Thompson

vs.

L. Kelly

Brief of Off.

Filed April 21, 1859

L. Leland
Clerk

Prepared

Supreme Court

Barbara Stumps (Effie Ever)

vs

Jessamine Kelly (Effie Ever)

Reply to
Deft's points

To the 2^d point made, by the Deft, about
the conflicting testimony as to the ownership
of the Cow and to the right of the jury to
give such credence to the testimony of a witness
as they may think it entitled, there is no
question, but I insist that in this
case there is no conflict of testimony,
Peter Stumps is the only witness, who
testifies to the ownership, he testifies against
his own interest, and there can be no
question that the jury were bound to give
him credence, and the jury disregarding
his testimony in the manner they did,
shows that they were governed by passion,
prejudice or some such influence

To the 4th point made by Deft, that the
bill of exceptions does not show all the evi-
dence in the case, appears to me to be characteristic
of this whole case, & that is, that Counsel cannot
even argue the case, without suggesting a fraud,

Now I call the attention of the Court to the bill of exceptions, it sets out the Witnesses of the Plff, below verbatim as they were called, & what each Witness testified to verbatim, & after the last Witness called by ^{Plff} below had testified, the bill of exceptions states that "the Plff, here closed his case; Can any statement be plain that ~~that~~ as all the Plff's evidence? If there was ~~any~~ or other evidence introduced by the Plff, on the trial, then the bill of exceptions is untrue & the Plff, did not as asserted in the bill of exceptions then & there close his case. So, also after the Deft, below had introduced his Witnesses, & they had testified, the bill of exceptions states, that "the testimony on both sides closed", which means, if language means any thing, that the whole evidence of both parties was then & there given to the jury. - I repeat, if there had been any other evidence introduced by either party than what the bill of exceptions contains the same must be untrue, and it appears to me that there is no room left for inference. The bill of exceptions is full, contains the verbatim testimony of all the Witnesses & leaves nothing to inference. - The Court will note that the Deft's Counsel does not intimate

that there was any other evidence or hint
that the bill of exceptions does not contain
a full & complete statement of all the evidence
in the case, for he well knows it does, but
like a drowning man grasping at straws,
he raises a new technical objection (if objection
it is) in the bill of exceptions, with the hope
of sustaining his outworn judgment
against an innocent widow woman, who
has no more interest in the law in the
question than the Gentleman himself has.
Beside, the Authorities the Gentleman refers
to viz 4 Scam & 1st Gil, do not support
the Gentleman's position. Especially the
1st Gil. The Supreme Court lay down this
rule, which is the only sensible rule, viz
that it should appear to this Court that all the
evidence given in the trial below is preserved
for their consideration" but whether this fact
appears from an express avowment in the bill
of exceptions or is evidently manifest in any
other way is properly immaterial".
Now I respectfully submit if the evidence
contained in the bill of exceptions in the
present case, does not show beyond a
doubt that the bill contains all the
evidence in the case? I further
refer the Court to 17th Ill. R. 32^d
to show that all the evidence in the case is

set forth in the bill of exceptions in
 for that case, & this, set out in the bill
 of exceptions the evidence at large of both
 parties, & the Court then held after second
 argument & careful consideration of the bill
 of exceptions that the same was sufficient,
 & that the ^{same} necessarily excluded
 that any further, other or more evidence was before
 the Court. So, we say that the testimony of
 the witnesses of the ^{Def} is now given at large
 in the bill of exceptions, & the statement that
 the ^{Def} then closed his case, excludes the
 idea that there was any other or more
 evidence introduced. All which is
 respectfully submitted.

Wm. W. W.
 Esq.

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Supplement

D. Thompson

S. Kelly

Reply to
 J. H. H. H.

Filed May 1854
 L. H. H. H.

State of Illinois }
County of Cook } p

Pleas before the Honorable John M.
Wilson Judge of the Cook County Court of
Common Pleas within and for the County and
State aforesaid at a regular trial term of said
Cook County Court of Common Pleas begun and
holden at the Court House in the City of Chicago
on the first Monday being the first day of
February in the year of our Lord one thousand
eight hundred and fifty eight and of the
Independence of the United States of America
the Eighty second.

Present The Honorable John M. Wilson. . . Judge
Carlos Haver Prosecuting Attorney
John L. Wilson Sheriff Cook County

Attor^y

Walter Kimball Clerk

Be it remembered that heretofore to wit on the thirty
first day of August in the year of our Lord one thousand
eight hundred and fifty seven came Susannah Kelly
a minor by her next friend Patrick W. Kelly and
filed in the office of the Clerk of the said Cook County
Court of Common Pleas a Prece for Summons against

Barbara Stumps together with Bond and undertaking
for costs; Which said Receipt, Bond & Undertaking for costs
are in the words and figures following, that is to say,

"State of Illinois.

Susannah Kelly a Minor	}	Cook County Court of
by her next friend Patrick		Common Pleas.
W. Kelly		Of the September Term
(123)		A. D. 1857. Damages
<u>Barbara Stumps</u>	)	<u>\$2000⁰⁰. Action on the Case</u>

Will the Clerk of the said Court issue
a summons in favor of the above named Plaintiff, against
the above named Defendant, to the Sheriff of the County
of Cook returnable to the September term thereof.

J. Collins Wicker

Plaintiff's Attorney"

"Susannah Kelly a Minor	}	State of Illinois
under legal age by her next		Cook County Court of
friend Patrick W. Kelly . . .		Common Pleas. Of the
(123)		September Term A. D. 1857.
<u>Barbara Stumps</u>	)	

I Patrick W. Kelly, duly
selected by the aforesaid Susannah Kelly, a Minor
under legal age, as her next friend, do hereby acknowledge
myself bound for all the costs that may accrue and
legally devolve upon such Minor in the prosecution of

(2)

the above entitled cause.

Witness my hand and seal at Chicago in said
County of Cook this 31st day of August A.D. 1857.

J. W. Kelly (Seal)

"Susanah Kelly a minor
by her friend Patrick W. Kelly Cook County Court of
(in) Common Pleas.

Barbara Stumps . . .

I do hereby enter myself security
for costs in this cause and acknowledge myself bound
to pay, or caused to be paid all costs, which may accrue
in this action, either to the opposite party or to any of
the Officers of this Court in pursuance of the Laws of
this State.

Dated this 31st day of August 1857.

J. W. Kelly (Seal)

And thereupon to wit on the said thirty first day
of August A.D. Eighteen hundred and fifty seven,
there accordingly issued out of and under the Seal of
the Clerk of said Court, Peoples Writ of Summons
against the said Barbara Stumps; Which said
Summons with the Sheriffs return thereon Endorsed
is in the words and figures following, to wit;

"State of Illinois
County of Cook In The People of the State of Illinois

To the Sheriff of said County, Greeting:

We command you that you summon Barbara Stumps if she shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas of said County, on the first day of the next Term thereof, to be holden at the Court House in the City of Chicago in said County on the second Monday of September next to answer unto Susannah Kelly a Minor by her next friend Patrick W. Kelly in a Plea of Trespass on the case, to the damage of the said Plaintiff as he pays in the sum of Two thousand dollars, and have you then and there this Writ, with an Endorsement thereon in what manner you shall have executed the same

Witness Walter Kimball, Clerk of our said Court, and the Seal thereof at the City of Chicago in said County this 31st day of August A. D. 1857.

Walter Kimball. Clerk

Endorsed

"Served by reading to the within named B. Stumps, Sept 2^d 1857.

J. L. Wilson. Sheriff

By S. Taylor. Deputy."

And thereafter to wit on the first day of September A. D. Eighteen hundred and fifty seven the said Plaintiff by her said Attorney, filed in the Office of the

Clerk of said Court, her Declaration in said suit; Which
said Declaration is in the words and figures following,
that is to say.

State of Illinois) Cook County Court of Common
Cook County, ss. Pleas- Of the September Term
A. D. 1857.

Barbara Stump of the City of Chicago was
summoned to answer Susannah Kelly of a Plea of
Trespass on the case, and thereupon the said Susannah
Kelly by Patrick W. Kelly (both of the City of Chicago
in the County of Cook aforesaid) who is selected by the
said Susannah Kelly to prosecute for the said Susannah
Kelly, who is an infant within the age of Eighteen years
as the next friend of the said Susannah Kelly complains,
that whereas the said Defendant Barbara Stump hereto-
fore to wit on the Eleventh day of August A. D. 1857 and
from thence for a long space of time, to wit, until and at
the time of the damage and injury to the Plaintiff as
hereinafter mentioned, to wit, at Chicago aforesaid, wrongfully
and unlawfully did keep a certain red and white Cow,
the said Defendant during all that time, well knowing
that the said Cow then was used and accustomed to attack
and hurt and push with her horns, to wit at Chicago
aforesaid; and which said red and white Cow afterwards
and whilst the said Defendant, so kept the same as
aforesaid, to wit on the Eleventh day of August aforesaid
at Chicago aforesaid, did attack and hurt and push with

her horse the said Plaintiff, and did then and there
greatly lacerate, hurt, tear and wound the side of, and
did also then and there greatly wound bruise and injure
the shoulder and harm of her the said Plaintiff; and
thereby she the said Plaintiff then and there became
sick, sore, lame and disordered and so remained and
continued for a long space of time, to wit, from the Eleventh
day of August aforesaid until the commencement of
this Suit, during all which time she the said Plaintiff
thereby suffered and underwent great pain, and was and
now is greatly injured in her health and constitution and
was thereby then and there hindered and prevented from
performing and transacting her lawful business by means
of the premises and she the said Plaintiff was thereby
then and there put to great expense costs and charges in
the whole amounting to a large sum of money, to wit, the
sum of Two hundred dollars in and about Endeavouring
to be cured of the said wounds sickness lameness and
disorder so occasioned as aforesaid, and hath been and
is by means of the premises otherwise greatly injured
and damaged to wit, at Chicago aforesaid.

And also for that whereas the said defendant
Barbara Stump, heretofore to wit, on the Eleventh day
of August A. D. 1857 and from thence for a long space
of time to wit, until and at the time of the damage and
injury to the said Plaintiff as hereinafter mentioned, to
wit, at Chicago aforesaid, wrongfully and injuriously
(6)

7

did keep a certain vicious red and white Cow, who the said Defendant during all that time well knowing that the said Cow is accustomed to attack and hook & push mankind with her horns, did not restrain confine and keep within bounds her said red and white Cow, but suffered her said Cow to run at large in the Streets and lanes of the City, to wit at Chicago aforesaid, and the said Cow afterwards and whilst the said Defendant so kept the same and suffered the same to range at large in the Streets and lanes of the City as aforesaid, to wit on the Eleventh day of August A. D. 1857 aforesaid at Chicago aforesaid did attack, hook & push with her horns the said Plaintiff and her lacerate and wound the side and also breast wound and injure the shoulder and arm of the said Plaintiff and other injury did then & there do to her the said Plaintiff, whereby the said Plaintiff suffered great bodily pain and anguish of mind and is greatly injured in her general health and Constitution And the said Plaintiff further says that by means of the premises aforesaid she has been likewise greatly injured and damaged to wit at Chicago aforesaid To the damage of the said Plaintiff as she says of Two thousand dollars and therefore she brings suit as aforesaid &c

J. W. Kelly - Attorney at Law.

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did keep a certain vicious red and white Cow, who the
 said Defendant during all that time well knowing that
 the said Cow is accustomed to attack and hook & push
 mankind with her horns, did not restrain confine and
 keep within bounds her said red and white Cow, but
 suffered her said Cow to run at large in the Streets and
 lanes of the City, to wit at Chicago aforesaid, and the
 said Cow afterwards and whilst the said Defendant so
 kept the same and suffered the same to range at large
 in the Streets and lanes of the City as aforesaid, to wit
 on the Eleventh day of August A. D. 1857 aforesaid at
 Chicago aforesaid did attack, hook & push with her horns
 the said Plaintiff and her lacerate and wound the side
 and also breast wound and injure the shoulder and
 arm of the said Plaintiff and other injury did then &
 there do to her the said Plaintiff, whereby the said
 Plaintiff suffered great bodily pain and anguish of
 mind and is greatly injured in her general health
 and Constitution And the said Plaintiff further says
 that by means of the premises aforesaid she has been
 likewise greatly injured and damaged to wit at
 Chicago aforesaid To the damage of the said Plaintiff
 as she says of Two thousand dollars and therefore
 she brings suit as aforesaid &c

J. W. Kelly - Attorney at Law.

And thereafter to wit on the fifteenth day of September
 A. D. Eighteen hundred and fifty seven the said Defendant
 by C. B. Hosmer his Attorney filed in the Office of the
 Clerk of the said Cook County Court of Common Pleas
 her Plea to said Declaration: Which said Plea is in the
 words and figures following, to wit,

Cook County Court of Common Pleas
 September Term A. D. 1857 . . . }

Barbara Shump . . . }
 atd

Susannah Kelly by her next } Case.
 friend D. W. Kelly . . . }

And the said Defendant by
 C. B. Hosmer her Attorney comes & defends the wrong and
 injury when &c. and says that she is not guilty of the
 said supposed grievances, above laid to her charge or
 any or either of them or any part thereof, in manner &
 form as the said Plaintiff hath above thereof complained
 against her And of this she the said Defendant puts
 herself upon the Country &c.

C. B. Hosmer

Deft's Atty

And the Plaintiff doth the like

Hollins Wicker

Atty for Plt.

9 And afterwards to wit on the Eleventh day of December (being one of the days of the November Special Term of said Court) A. D. Eighteen hundred and fifty seven, the following proceedings were had in said cause and entered of record in said Court, to wit,

"Susannah Kelly a Minor by
her next friend Patrick M. Kelly

(vs) Barbara Stumps

Trial on the Case

And now at this day comes the said Plaintiff by Abolins Wicker her Attorney and the said Defendant by C. B. Stomer her Attorney also comes and upon issue being joined it is Ordered that a Jury come Whereupon comes the Jury of good and lawful men to wit,

R. S. Hicks - L. M. Barnes - R. W. Armstrong - M. Stough - Joseph Prosal - Mc Wainiger - J. Colburn - A. H. Robinson - George Ruckle & Henry Willard - C. Hyatt - & D. B. Seayard who being duly Elected, tried and sworn to try the issue joined aforesaid, the hour of adjournment having arrived upon agreement of parties they are allowed to separate & meet the Court again on opening of Court tomorrow morning.

And afterwards on the 12th day of December (being yet of the said November Special Term of said Court in the year aforesaid, the following further proceedings

10
were had in said cause and entered of Record in said
Court, to wit,

"Susannah Kelly a Minor by
her next friend Patrick M. Kelly,

(112)

Barbara Stumpo

Trespass on the Case

And now again comes
the parties to this case by their Attorneys aforesaid and
the Jury Empanelled on yesterday for the trial of this case
also come, and after hearing the evidence, arguments of
Counsel and instructions of the Court, the case is submitted
to them and they retire to consider of their Verdict and
afterwards return into Court and say we the Jury
find the ~~defendant~~ ^{plaintiff} for the Plaintiff and Defendant is
guilty and we award Plaintiffs Damages to the sum
of Five hundred dollars.

And thereupon the said Defendant submits her
Motion by Counsel for a New trial herein and the
Court not being fully advised at this time, takes the
said Motion under advisement.

And afterwards to wit on the third day of April
(being one of the days of the February term of said
Court) in the year of our Lord one thousand eight
hundred and fifty eight, the following proceedings
were had in said cause and entered of record

(11)

11 in said Court to wit.

"Susannah Kelly a Minor by
her next friend Patrick W. Kelly

(12)

Barbara Stumps

} Treasurers on case.

And now at this day again
comes the said parties to this Cause and the Court
having heard the arguments of Counsel on the Motion
of the said Defendant submitted herein for a New trial
in this Cause and being now fully advised in the premises
overrules the said Motion for a New trial.

Therefore it is considered that the said Plaintiff do
have and recover of the said Defendant, the damages
of Five hundred dollars in form aforesaid by the Jury
aforesaid assessed, and also Costs and Charges by and
about the suit in this behalf expended and Execution therefor.

And thereupon the said Defendant by her Attorney Thomas
Enters her Exceptions to the decision of the Court in overruling
her said Motion herein for a New Trial in this Cause and
takes an Appeal to the Supreme Court of the State of Illinois
of this Cause which is allowed her on filing her appeal bond
in Seven hundred dollars with security to be approved by
the Judge of this Court, and that she have ten days
time in which to file her said Appeal Bond with her
Bills of Exceptions from this day.

And thereafter to wit on the tenth day of April
12 A. D. Eighteen hundred and fifty eight the said defendant
filed in the Office of the Clerk of said Court her Bill of
Exceptions: Which said Bill of Exceptions is in the words
and figures following to wit:

Peck County Court of Common Pleas
November Special Term A. D. 1857.

"Barbara Stumps . . .

vs

Susannah Kelley by her Case.

next friend J. W. Kelley.

Be it remembered that on this 12th
day of December A. D. 1857 the same being one of the
days of Court this point came on for trial before the
said Court and a Jury when the said Plaintiff introduced
as a witness on the stand Mrs. Ann E. Meyers, who testified
in said case as follows;

That she was very slightly acquainted with
Defendant and well acquainted with Mr. Kelley & family,
that she resided on Peck Court in August last & have
resided there two years next April - Defendant resides
opposite the house where I live. - I have seen two or three
cows about her premises & know she has got them there.
In April or May last I was going into State Street
to a Grocery and a cow chased me, the Cow was red
and white and started from Mrs. Stumps' Barn, I ran
into the Tavern called the "Hew and Chickens," a man
came out & drove the cow off, when the man went

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back and then I started again and the Cow again gave chase to me and I had to run again into the Tavern, I also saw the same Cow chase at another time a Lady and she fell. The Cow that chased me is a red & white, or yellow and white. I have seen the same Cow that chased me around Mrs Stump's Barn since - I saw the Child, the Plaintiff after she was injured and her shoulder and face were badly injured. There was a sore on shoulder and it looked pretty bad. The Child was between four and five years old.

Mrs Swartz - the witness next introduced by plaintiff testified as follows, that she was acquainted with Mrs Stump and formerly lived in her house - Mrs Stump then had a Cow yellow with white spots, she does not know that the Cow was ugly. The Cow hooked her little Child but did not hurt it much and Mrs Stump knew it.

On Cross Examination, she stated that the Children were in the habit of playing with that Cow.

Louise Sherman - the next witness introduced by the Plaintiff testified that she was fifteen years old, that last winter she and Mary Rufel were coming from School down Peck Court, that she saw a Cow red and white near Mrs Stump's House & the Cow chased us and I ran into Mrs Stump's House & the Cow got Mary Rufel against

14 the Barn and Mary Russel took hold of the Cows horns
and Mrs Stump came out and drove the Cow away.

Mary Russel, also introduced by Plaintiff, testified as follows, that she was thirteen years old, knew where Mrs Stump resided, that she and Loise Sherman last Winter were coming from School, they saw a red and white Cow near Mrs Stump & Loise said she was afraid of her & ran into Mrs Stump's House, the witness said she was not afraid of the Cow and went on and the Cow attacked me and ran me up against the Barn, I seized the Cow by the horns, tried to turn her away, she tore my clothes some. I was dressed in red. Mrs Stump drove the Cow away.

Malinda Kelly, Plaintiff's witness testified that she was the Daughter of J. W. Kelly sister of Plaintiff and going on 14 years old & that Mrs Stump has two Cows about her premises. I saw Loise Sherman screaming and knocking at Mrs Stump's door & Mrs Stump came & Loise asked her if that is your Cow hocking Mary Russel & Mrs Stump said yes & drove the Cow off. The Cow once hocked me in the back when I was carrying a baby & tore my dress. Mrs Stump saw it & talked to one of her boys in German & laughed and I went into the house crying.

William N. Sands, introduced by the Plaintiff and testified that he resided in Peck Court & knew the parties by sight, also that he had seen two Cows around Mrs Stump's

15 premises. I know the Cow red and white to hook the Child I'll throw her up I should think 6 or 8 feet & she fell on the sidewalk, I told Mrs Stumps that if that Child was mine I would be damned if I wouldn't cut that Cow down - Mrs Stumps made no reply to my remark but said something about brats. I have frequently seen the Cow on Sidewalks and Streets.

Harry Knowl, a witness on the part of the Plaintiff testified that he knew Kelly & Mrs Stumps, that he once saw the Cow chasing two Children & told Mrs Stumps that she should not let the Cow run out, she said it was none of my business.

Doct^r H. H. H. , a witness on the part of said Plaintiff testified that he was called professionally to visit a Child of Mrs Kelly, who was apparently injured by some contusion, there was very little external marks - the arm was discolored, but the principal injury appeared to be from concussion, the head was some injured, it was under my care some 2 or 3 weeks, though I only made one visit and left it medicine to take - In about 2 or 3 weeks the Child came to my office and I gave it more medicine, the symptoms appeared to be congestion, when I was called the Child lay upon a bed & complained when I attempted to turn it, apparently from being internally injured - The Child received no permanent injury.

16 Mr. Hauser, Plaintiff's witness testified that he had seen a red and white cow about Mrs. Stumps Barn and she has been known as Mrs. Stumps Cow. He also testified that the place where Mrs. Stumps reside and of which she claimed to be the owner was worth between \$5000 & \$6000.

And here the Plaintiff closed his case.

The Defendant then introduced as a witness - Miss Braundt, who testified that she knew the parties & lived near by them at the Tavern called the "Hen & Chickens" that she recollects when Susa the Plaintiff was injured last August, that Susa came into their house about half an hour after the injury was done, talked the matter over and paid her friends did not then know it. The next morning I saw Doct. Hitchcock go to Mrs. Kellys and soon after leave the house, and in about 10 minutes after the Doct. left I saw Susa the Plaintiff go around our house with a basket on to State Street and soon after I saw her returning, going towards home with a basket of shavings. I saw her the Plaintiff out of doors almost every day thereafter playing about

The Defendant then introduced Mrs. Cole, who testified that she saw the Plaintiff in about half an hour after the injury away from her house at the "Hen & Chickens," I saw her out the next day and thereafter. I have lived near Mrs.

17 Stumps the past 2 years, know the Cow in question and have never seen anything vicious about her.

The Defendant then introduced as a witness Peter Stumps, who testified that he lived with his Mother, the Defendant, that the Defendant was not the owner of the Cow in question in August last, nor never was the owner of the Cow in question, that the Cow in question was given to him this witness by one E. Peck as a present when she was a calf, that he had paid for her himself procuring all her feed and has always had the absolute control & possession of said Cow, keeping her on and about the premises where he himself resided.

On Cross Examination - Witness stated, that he lived with his Mother the Defendant & paid her nothing for his board - that he did not do any chores about the house, that he was a Shoemaker by trade and worked at his trade and was 27 years old, that he had no interest in the premises nor in the barn where the Cow was kept.

Here the testimony on both sides closed.

The Defendant then asked the Court to give the following instructions to the Jury viz:

" If the Jury believe from the evidence that the Defendant Barbara Stumps was not the owner of the

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"Cow in question at the time of the alleged injury, nor had
"not the control of said Cow, but the same was under the
"control of another person who could do as he pleased with
"said Cow then the Defendant is not liable, and the law is
"for the Defendant."

"If the Jury believe from the evidence that Peter
"Stumps resided at the time of the alleged injury with his
"Mother the Defendant, and that he owned the Cow in
"question at that time and kept her on the premises where
"he resided, then in law the possession of the said Cow, was
"in said Peter and the Defendant is not liable in this
"action, and the law is for the Defendant."

Which instructions were then & there given by the Court.

The Court also gave on his Motion the following
instruction to the jury, viz^t

"If the Jury believe from the evidence that the
"Cow in question was the property of the Defendant and
"under her control, or that she had the possession, control &
"management of the Cow with the assent of the owner &
"that the Defendant knew that the Cow was vicious and
"accustomed to chase and hook people & that the defendant
"after she had such knowledge of the vicious character of
"the Cow, permitted the Cow to run at large and that the
"Cow while so at large hooked and injured the Plaintiff

19 "The Jury should find the Defendant guilty and assess
"such damages as under all the circumstances you think
"right and just."

To the giving of which instruction the Defendant then
and there assented.

Afterwards the Jury returned the following verdict viz

" We the jury find for the Plaintiff and assess
the damages at Five hundred dollars "

And thereupon the Defendant Entered the following Motion for a New Trial.

Barbara Stamps } "Cook County Court of Common
at } Pleas. November Special
Susannah Kelly by her } Term A. D. 1854.
next friend P. M. Kelly" }

And now come the paid defendant
"Jus C. B. Hooper her Attorney and moves the Court for
'a New trial for the following, among other reasons.

10th Because the Verdict of the Jury was against the
evidence in the case.

"But" Because the ~~dictum~~^{Verdict} was against the law of the
"Case".

"Dr^d Because the damages were excessive, the Child not
"having received any permanent injury. C. B. Hosmer"
Depto Atty "

20 Be it further remembered that on the third day of April A. D. 1858 the same being one of the days of the February Term A. D. 1858 of said Court said cause came on for hearing upon the said Motion for New Trial, and the Court then and there overruled said Motion for new Trial and entered judgment upon the said Verdict of the Jury.

To which decision of the Court overruling said Motion and entering Judgment herein the said defendant then and there excepted, and prays the Court to sign this her Bill of Exceptions, which is done.

John M. Wilson (Seal)

And thereafter on the said tenth day of April A. D. eighteen hundred and fifty eight the said Defendant filed her Appeal Bond, in the Office of the Clerk of said Court: Which said Bond is in the words and figures following, to wit,

"Know all Men by these Presents That we Barbara Stumps and Peter Stumps of the City of Chicago in the State of Illinois are held and firmly bound unto Susannah Kelly who paces by her next friend J. W. Kelly, in the special sum of Seven hundred dollars lawful Money of the United States to be paid unto the said Susannah Kelly, who paces by her next friend J. W. Kelly her heirs Executors and administrators, to which payment well and

21 truly to be made we bind ourselves our heirs executors
and administrators jointly and severally and firmly by
these presents

Witness our hands and seals this Tenth day
of April A. D. 1858.

The condition of the above obligation is such
that whereas the said Susannah Kelly who died by her
next friend P. W. Kelly did on the 3rd day of April
A. D. 1858 in the Cook County Court of Common Pleas
obtain a Judgment against the above bounden Barbara
Stump for the sum of Five hundred dollars in an
action on the Case and Costs of suit, from which Judgment
the above bounden Barbara Stump then and there
prayed an appeal to the Supreme Court of the State
of Illinois which was then and there granted by the
said Cook County Court of Common Pleas

Now if the above bounden Barbara Stump
shall and well and truly pay the said Judgment with
interest & damages in case the said Judgment shall be
affirmed in the Supreme Court and shall also duly
prosecute her said Appeal, then this Bond to be void
otherwise to be and remain in full force and virtue.
Signed sealed and delivered

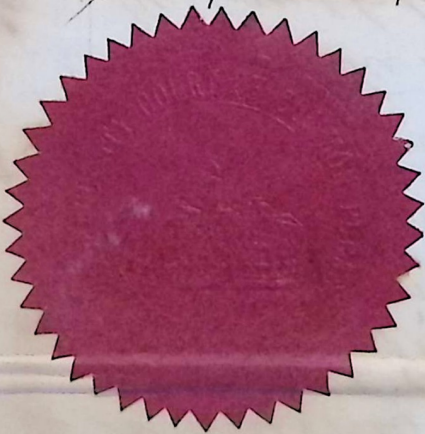
in presence of . . . } Barbara ^{her} Stump (Sd)
C. B. Hosmer } Peter ^{ingr} Stump (Sd)

Approved by me

John M. Wilson - Judge

State of Illinois
Cook County, ss.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for the County and State aforesaid Do hereby Certify the foregoing to be a true and correct Transcript of the Precept, Bonds for Costs, Summons, Declaration, Plea, Bill of Exceptions and Appeal Bond, now on file in my office together with all orders entered of record in said Court in a certain Cause wherein Susannah Kelley by her next friend Patrick M. Kelley is Plaintiff and Barbara Stumps is Defendant.



In testimony whereof I the said Walter Kimball have hereunto set my hand and affixed the Seal of said Court at Chicago in said County this Eighteenth day of February in the year of our Lord one thousand eight hundred and fifty nine.

Walter Kimball Clk

And now comes the second appellant
and assigns the following errors

- 1 The suit was imperfectly commenced,
by attorney, filing process for summons
for plaintiff, instead of by prochein ami.
- 2 Replication to plea filed improperly
by an attorney, instead of by prochein ami.
- 3 The Court below erred in giving on his own
motion the instruction which gave to the jury.
- 4 The Court below erred in not instructing the
jury, under the evidence, to find for the
defendant, as in case of non suit.
- 5 The verdict of the jury was against the
evidence.
- 6 The verdict of the jury was against
the law of the case.
- 7 The verdict of the jury was against
the instructions of the Court, given to
them on the fact of the defendant below.
- 8 Court below erred in overruling the
motion for a new trial.
- 9 The Court below erred in entering
judgment, on the verdict of the jury.
10. The verdict of the jury was excessive.

C B Hosmer

for appellant

In tutto est erratum
H. H. M. Callister
for appeller