

No. 8685

Supreme Court of Illinois

Wm. McBean

vs.

Wm. W. Richey

71641  7

No 6

William W. Richey
Plff. in error

vs

William W. McBean
Def't in error

1855

Reversed
under advisement
with opinion of the
court 8685

Copy of final order
of opinion sent to Clerk
of the Court for filing
of the record
April 13 1855

State of Illinois }
Massac County } Set

Pleas held before the Hon William
K. Parish presiding Judge of the third Judicial Circuit
of the State of Illinois, of which the County of Massac
composes a part.

William M McBean

U }
William M. Ritchey } Trans on the case for
malicious arrest & prosecution
Damages \$ 10,000

B. A. Reardon being that at a Circuit Court
begun & held at the Court House in Metropolis City Ills
in & for the County of Massac, on the Sixth
Day of June A.D. 1854 in pursuance of Com-
mission to the Hon. William K. Parish presiding
Judge of said Court, the papers in the under-
& figures following, were exhibited in said Court.
To wit,

State of Illinois, Massac County } Set

Affidavit
for copies

On this Day November 16th 1853 person-
ally appeared before the undersigned Clerk of
the Circuit Court in and for the County &
State aforesaid William M McBean Who be-
ing sworn Says that he is about com-
mencing a suit in the Massac Circuit
Court against one William Ritchey for
malicious arrest & prosecution, the said
Ritchey having caused this affiant to be ar-
rested on a writ for perjury & having thereby
caused said McBean to be held in custody
for a long space of time, to wit one day and this
affiant says he expects to be able to recover against sa de-
fendant in said Court for sa arrest & prosecution the sum
of Ten thousand dollars & said affiant further says that he does
believe that he is in great danger of losing whatever

Judgment may be obtained in said Cause
unless said Deft is arrested by Capias & said
deft. held to Bail

Subscribed & sworn to } Jm McLean
before me this 16th
November 1853

James Elliott Clk

State of Illinois }
Massac County } Set

Capias

The People of the State
of Illinois To the Sheriff of said County Greeting
We Command You that You take William
W. Pichey, if he shall be found in your County
and him safely keep so that You have his Body
before the Circuit Court in and for said
County, on the first day of the next Term there
of to be holden at the Court house in Met-
ropolis City, Illinois, on the first Monday of June
next, then and there to answer William McLean
of a Certain plea of Trespas on the Case, for
a malicious arrest and prosecution to his dam-
age, Ten thousand Dollars, as he says, and
against the peace and dignity of the People of
the State of Illinois. And have you then and
there this writ with an Endorsement thereon
as to how you execute the same

Witness James Elliott Clerk of
said Court and the Judicial
Seal thereof this 16th day of Novem-
ber 1853



James Elliott Clk m.c.c.

The Defendant will be held to bail in
the sum of three thousand dollars
this 16th Novr 1853

James Elliott Clk m.c.c.

Endorsement
of Bail

[185-2]

Shffs
Endorsement
on the
Capias

As I am Commanded within I have this
day served the within by taking the body
of William W. Richey who gave Recognizance
as required by law, this 18th day of November
A D 1853

G. M. Gray Sheriff M. C. 212
Service 50
Recognizance 50
Return 10
\$ 110

Copy of
the Bond

Personally came before me G. M. Gray Sheriff
of Massac County in the State of Illinois, in the
County aforesaid, W. W. Richey as principal and
William W. McGee, J. V. Glass, R. A. Peter
William Sheets, A. B. Brown, C. C. Russell as his
Securities, and acknowledged themselves to me
and he Indolited to me the said Sheriff in
the full and Just sum of three thousand
Dollars good and lawful money, that is to
say, the said William W. Richey in the sum
of three thousand Dollars, and the said
William W. McGee, J. V. Glass, R. A. Peter Wm
Sheets, A. B. Brown, C. C. Russell, W. W. Scott
his Bail in the sum of three thousand Dollars
to be levied of their Respective goods and Chattels
Lands and Tenements but Noted upon the
Condition that the said William W. Richey
be and personally appear before the Circuit
Court in and for the said County of
Massac and State aforesaid, on the first
Monday of June next then and there to
answer William McBean of an action plea
of Trespass in the Case for a Malicious
Arrest and prosecution to his Damage Ten
thousand dollars, as he says, and against the

peace and dignity of the people of the State of Illinois, and shall pay all costs and Condemnation Money which may be rendered against him the said William W. Ritchey, in the plea afore said, or Surrender his Body in Execution in case the said William W. Ritchey shall not pay and Satisfy the Costs and Condemnation Money, or Surrender himself in Execution when by law such Surrender is required then this obligation to be and remain in full force and Effect, and to this End we are all content.

This Recognizance taken and Acknowledged before me this the 18th Day of November A D. 1854

W. W. Ritchey Seal

Wm V McGeer seal

J. M. Glass Seal

R. A. Peter Seal

A. D. Coppenhaver Seal

William Shurt Seal

A. B. Brown Seal

C. C. Russell Seal

Mr N. Scott Seal

Declaration

Circuit Court of Massac County
Illinois of the June Term 1854

William McBean

v

William W. Ritchey

} Action of Trespas upon the Case for
a Malicious prosecution &c

State of Illinois }
Massac County }

William W. Ritchey was Summoned
to answer William McBean of a plea of Trespas
on the Case &c and thereupon the said William
McBean by J. Jack his attorney. Complains for

that Whereas the Said William McBean was a good true, honest, just and faithful Citizen of the State of Illinois, and as such hath always behaved and conducted himself, and hath not ever been guilty, or until the time of the committing of the several grievances by the Said William W. Risky as herein after mentioned, been suspected to have been guilty of the Crime of perjury or any other such Crime by means whereof he the Said William McBean, before the committing of the ^{Said} several grievances by the Said Defendant as herein after mentioned had obtained the & acquired the good opinion and Credit of all his neighbors & other good and worthy Citizens of the State of Illinois, to wit, at the County and State aforesaid. Yet the Said William W. Risky deft, well knowing the premises, but continuing and maliciously intending to injure the Said William McBean in his aforesaid good name, fame & Credit, and to bring him into public scandal, infamy and disgrace & to cause him the Said William McBean to be imprisoned for a long space of time & thereby to impoverish oppress and wholly ruin him the Said plaintiff, heretofore, to wit; on the 15th day of November, One thousand Eight hundred and fifty three, at the County of Massac aforesaid, and before the commencement of this Suit, Went and appeared before one James C. Roberts, then and there being one of the Justices of the Peace, in and for Said County of Massac & State aforesaid, assigned to keep the peace & also to hear and determine divers felonies, misdemeanors & Trespases committed in the Said County of Massac & then and there being

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before the said James E. Roberts so being such Justice as aforesaid viz at the County aforesaid falsely and maliciously & without any reasonable or probable cause whatsoever charged the said William McBean with having committed the crime of perjury before one Samuel H. Sprimmer a Justice of the peace in and for the County of Massac aforesaid in a certain matter of controversy there pending and under terminated wherein the said William W. Ritchey was plaintiff, and the said William McBean was defendant, the said last mentioned Justice then and there having administered an oath to the said William McBean & then and there having full power & competent authority so to do, and upon such charge, he the said Ritchey willfully and maliciously and without any reasonable or probable cause whatever, caused and procured the said James E. Roberts so being such Justice as aforesaid to make grant, and issue his certain Warrant under his hand and seal and in the name and by the authority of the People of the State of Illinois, for the apprehending and taking of the said William McBean & for bringing him the said William McBean before him the said James E. Roberts or some other Justice of the Peace in and for the County and State aforesaid to be dealt with according to Law for the said supposed offence, and the said William Ritchey under and by virtue of said Warrant, afterwards to wit on the fifteenth day of November one thousand eight hundred and fifty three, at the County aforesaid, and before the commencement of this suit

maliciously wrong fully, & unjustly without
any reasonable or probable Cause Whatsoever
caused and procured the said plaintiff
to be arrested by his Body & to be imprisoned
& detained and kept in prison for a
long space of time, to wit, for the
space of twelve hours then next following
& until he the said William Ritchey af-
terwards viz, on the said fifteenth day
of November aforesaid, at the County
aforesaid & before the bringing of this
Bill, falsely, maliciously, and without
any reasonable or probable Cause Whatsoever
caused and procured the said plaintiff
to be carried and conveyed in custody
before the said James C. Roberts so being
such Justice as aforesaid & then and there
caused and procured the said plaintiff
to be kept and detained in custody
for a long space of time, to wit for the
space of one hour, and until the said
James C. Roberts, being and acting as
such Justice, had heard all that the said
defendant had to alledge against the
said plff. And the said Justice last
aforesaid having heard & considered all
that the said William W. Ritchey could
say or alledge against the said William
McBean touching and concerning the
said supposed or pretended crime of
Perjury then & there to wit, on the said
fifteenth day of November aforesaid at
the County aforesaid adjudged and de-
termined that the said William McBean
was not guilty of the said supposed
offence then and there caused the said

Hys
plea

William M. Richey } In the June Term
Ad } A 1854 of the Massae
William McBean } Circuit Court

And the said Defendant
and By Davis & Hicks his attorneys comes
and defends the wrong and Injury when
done and says he is not guilty of the said
supposed grievances or any or either of them
or any part thereof in manner & form
as the said plaintiff has above thereof
complained against him and of this
he puts himself upon the Country &c

Davis & Hicks
And the said plff Atty for deft
doth the like

Sack Logan &
Simmons
Atty for plff

And be it further Reminded that
on the third day of the said Term of said
Court, the following Order was duly and
Regularly Entered of Record as among the
Judicial proceedings of said Court
To wit

Order
quashing
Capias

William McBean }
Ad }
William M. Richey } Let pass on the case re
motion to quash the Capias

Came the parties by their att-
orneys when the Defendant by his counsel
moved the Court to quash the Capias then
in this cause, which motion is by the Court
sustained and the Capias hereby quashed
and the Bail discharged.

And afterwards To wit on the Eighth Day
of said Term of said Court. the following
Order was duly and Regularly Entered as
among the Judicial proceedings of said
Court, To wit.

William McBean }
U.S. }
William W. Nicky } Trespas on the Case
Damages \$10,000

And now on this Day
came again the parties and Issue being
joined therefore let a Jury Come, and
therefore Come a Jury, To wit;

Robert Stuart 1 Malachi Brannum
2 William Walker 3 Eli Gant 4 James
Mc. Kay Kendall 5 Frances Brenton 6
Simeon H. Mizell 7 William H. League
8 Marion Madden 9 Reuben Wilson 10
John H. Fields 11 and F. Lemming
Palmer 12 Who being Elected sworn
and Sworn the truth to speak upon
the Issue joined upon their Oaths do
say the Jury cannot agree.

It is therefore Ordered by the Court
that the Jury be discharged from the
further consideration of the Verdict

And be it further Remem-
bered that afterwards To wit,

at a Circuit Court Begun and
held at the Court house in Meth-
uens City, Indiana in presence of Law
on the 16th Day of October A.D. 1854
in and for the County of Massac and
State of Indiana, present the Hon. Wil-
liam H. Parish presiding Judge of
said Court On Saturday the Sixth

day of said last mentioned Term of
said Circuit Court the following
Order was duly and regularly entered
of record as among the Judicial pro-
ceedings of said Court
To wit:

William McKean }
vs }
William W. Ritchey } Suspect on the
Case

And now on
Judgment this day came the parties by their att-
orneys and having joined issue there-
fore let a Jury come and therefore
came a Jury To wit, Harrison Bane,
James Ritchey 2 Thomas Cunn 3 John
W. Mize 4 Harry Vickers 5 Robert
McComick 6 Harry G. Morse 7 William
Baker 8 William Holliday 9 Fowler
H. Armstrong 10 William Hale 11 and
John Orislay 12 Who being Elected tried
and sworn the truth to speak upon the
Issue joined, upon their Oaths do say
We the Jury find the Defendant
Guilty and assess the plaintiffs
damages at five hundred Dollars
Whereupon the Defendant by his at-
torney moved the Court for a new trial
~~and in arrest of Judgment~~ Which mo-
tion is by the Court Overruled
Therefore it is considered by the Court
that the plaintiff recover against the def-
endant the sum of five hundred
Dollars and also his costs by him in-
cured about his suit in this behalf
Expended & that Execution do issue &c

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William McBean } In the Massac Circuit
U.S. } Court, October Term
William W. Richey } A.D. 1854

Be it Remembered that on the trial of the above styled cause the plaintiff introduced as a witness on his behalf J. C. Roberts Esq. who after being duly sworn, testified that he was an acting Justice of the peace and that William W. Richey appeared before him and made and subscribed the following affidavit: State of Illinois Massac County This affiant William W. Richey personally appeared before J. C. Roberts an acting Justice of the peace in and for the County and being first duly sworn deposes and says that William McBean of said County and State did on the second day of May A.D. 1853, before Samuel H. Pfimmer, an acting Justice of the Peace in and for said County in a certain suit then and there being and pending before said Pfimmer, and in which said McBean was introduced as a witness commit the crime of willful and corrupt perjury in stating that a contract had not been made between him, McBean and this affiant in relation to ferrying across the Ohio River a certain lot of homony when in fact there was a contract between them; said oath being material to the issue, and the Court having

full power and authority to administer the same, and further this affiant saith not. Subscribed and sworn to before me this fourteenth day of November 1853 "W. W. Ritchey" J. C. Roberts J. P. And upon which affidavit, the following Warrant was issued by the said J. C. Roberts. "State of Illinois Massac County. The People of the State of Illinois To the Sheriff, Coroner, or any Constable of said County Greeting: Where as Complaint has been made on oath by William W. Ritchey before J. C. Roberts an acting Justice of the Peace, in and for the County of Massac and State of Illinois against one William McBean of the County and State aforesaid and says that he, said William McBean, did at the County of Massac, and State of Illinois on the 2nd day of May A.D. 1853 before Samuel H. Pfimmer an acting Justice of the Peace in and for said County in a certain suit then being pending before said Pfimmer in which said William McBean was introduced as a witness, Commit the Crime of Wilful and Corrupt perjury.

This is therefore to Command you in the name and by the Authority of the People of the State of Illinois, To arrest the said William McBean, and bring him forth With before me or some other Justice of the peace, that he may be dealt with according to Law. Given under my hand and seal this 14th day of November A.D. 1853 J. C. Roberts J. P. On the

Back of which Warrant is the following
 endorsement "As I am Commanded
 Within I have this Day Seized the within
 Day taking the Body of William McBean
 and delivering him to J. C. Roberts a
 J. P. this 15th day of November 1853
 G. M. Gray Sheriff of the County of
 said J. C. Roberts then produced his dock-
 et Book, kept by him as a Justice of
 the Peace in and for ^{the County of} Massac ~~County~~ aforesaid
 in which was the following Entry made
 by him as such Justice which was given
 in Consequence to the Jury, State of
 Illinois, Massac County, Justice Court
 Nov 14th 1853 The People vs William
 McBean, perjury, Writ Issued on the
 above date, and put in the hands of
 G. M. Gray Sheriff M. C. Returnable forth-
 with, Writ Returned Seized by delivering
 the Body of the defendant into Court
 the 15th Nov 1853. The Parties appeared
 and the Defendant not being ready
 for trial proceedings were until the 16th
 The Parties appeared, and after the
 Evidence in the Case was fully heard
 it was the Opinion of the Court that
 the defendant be acquitted without
 costs Given under my hand and Seal
 this 16th day of November A. D. 1853 J. C.
 Roberts J. P." Said Witness then testified
 that the plaintiff McBean was the person
 brought before him said Witness as
 Justice of the Peace as aforesaid and
 after hearing the Evidence in the Case
 he was discharged by said Justice—
 The defendant not being appeared be-

fore said witness, was sworn and testified against said McBean on said Charge of Perjury. Witness does not know that he, McBean, has been Prosecuted since he discharged him. Witness cannot state the Time When the defendant Ritchey said the Contract was made, but thinks it was in the winter time. — The Plff then introduced James Elliott, who testified that he is Clerk of the Massac Circuit Court and that no Indictment had been preferred against McBean for perjury by the Grand Jury that he knew of. The plff then introduced Richard Peters who after being duly sworn testified

as follows

I recollect of McBean Hauling Hominy across the River for Ritchey on the 5th day of January 1853. The Hominy was hauled over a day or ~~two~~^{do} before I think, I paid McBean ten cents per Barrel or Sack I think. The Boat was running across the River from Kentucky to Illinois Regularly at the time when I paid McBean for Hauling the Hominy for Ritchey. Ritchey had not requested me to pay for the Haulage of the Hominy, but as I had heard that McBean threatened to Stow the hominy unless Ritchey paid the haulage to save any difficulty about it I paid the haulage myself for Ritchey. — The River was High at the time. — The Plaintiff then introduced J. H. Zimmerman a Justice of the Peace in and for Massac County who after being duly sworn testified

that the Book which he produced in Court was his docket book, kept by him as Justice of the Peace. The plaintiff then read to the Jury the following entry in said docket Book, which the said S. H. Spurrer on his oath said was made and entered by him as Justice of the Peace in a suit between the parties to the present suit, to wit, "State of Maine's Massac County, Justice Court April 2nd 1853 W. W. Ritchie vs William McBean Demand per A/c of \$2.50 Summons issued. On the 2nd day of May A D 1853 at one O'clock P M, Summons returned Served by J. M. Thompson G. M. C. The parties met and cause heard. It is thought by the Court that this cause be dismissed and Judgment entered against W. W. Ritchie for all costs of this suit, Given under my hand and seal this 2nd day of May A D 1853 S. H. Spurrer J P." Said witness further stated that he tried a cause between McBean and the Defendant Ritchie about ferriage on the 2nd day of May 1853 that the suit was brought by Ritchie to recover back the excess of ferriage as alleged by Ritchie, paid by him to plaintiff over what Ritchie alleged he was to have paid him McBean by a contract between him and McBean for ferrying the homing over the river and that William McBean the plaintiff in the present action was sworn as a witness in the trial of said cause suit by him as such Justice of the Peace, and

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testified and deposed as such witness
that he McBean never did at any time
make any contract whatever with
Ritchey to bring his Hominy across the
Ohio River, that Ritchie made propositions
to him two or three times to do his ferrying
by the year, and that he asked Ritchey
twenty dollars a year, which Ritchey
refused to give, and that he finally
proposed to take \$15 a year which Ritchey
also refused to give, and that no contract
was ever made between them for ferrying,
that they then talked about making
a contract for ferrying Ritchey's Hominy
across the River, and that Ritchey
had offered him two and a half
cents per barrel or sack, and that
he asked Ritchey 5 cents per barrel or
sack, or that Ritchey offered him 5
cents per barrel or sack and McBean
asked 10 cents per barrel or sack for
ferrying Ritchey's Hominy across
the River, (Witness did not recollect which)
and that they (Ritchey & McBean)
could ^{not} agree about the price, and
that no contract was ever made by them
in reference to ferrying Ritchey's Hominy
across the River. The Plaintiff then in-
troduced H. P. Hughes who was duly sworn
and testified that he met the defend-
ant coming up the River Bank oppo-
site Kelly's flat Boat, then lying at
the upper landing at Metropolis some
time in the early part of January 1853,
and that defendant seemed to be very
angry. Witness asked what was the matter

and Defendant said that McBean was charging him too much for ferriage, and that he (Ritchey) had offered McBean 2² Cents per Barrel, and that McBean had proposed or agreed (Witness was not certain which word he used "Offered" or "agreed") to ferry his homony over the river for five Cents per Barrel, and he would be God Damned, if he would pay him any more - Witness further stated that he thought he had not at any time stated Ritchies Words differently from what he now states them. - The Plaintiff then introduced J. J. Crittenden, who, after being duly sworn testified that he saw McBean and Ritchey contending about a barrel of flour about the 2nd of January 1853, that he did not hear a word that passed between them, that he was too far off to hear what they said - that he was about one hundred paces from them. Witness saw McBean trying to Roll a Barrel one way, and Ritchey trying to Roll it another way. Ritchey was apparently trying to Roll the Barrel of flour to a Wagon standing near B and McBean seemed to be trying to prevent him. That McBean made some gestures, and then Ritchey drew a pistol, and then Ritchey and McBean both went into McBeans Office, and Witness went some some distance to get his dinner and when he returned to the ferry Boat where he was working, he saw McBean & Ritchey again contending about a barrel of flour McBean was rolling

the Barrel of flour up the Bank and Ritchey threw a stick over McBean and McBean left the Barrel and went away and Ritchey took it and put it on a Wagon & hauled it off up town. Witness said he had not seen them meet since that time, and that he did not hear any of the words that were said between the parties at the time.

The plaintiff then introduced William Martin, who after being sworn testified that he had been ferryman for several years, and had been ferryman for McBean for the last three years and that as ferryman for McBean, he brought over a lot of hominy for Ritchey on the second day of December 1852 and another lot of Hominy on the 5th day of January, A.D. 1853, and also another lot of Hominy on the 6th day of January 1853, that Richard Peter paid the ferridge on the second lot as he was informed & that Ritchey paid the ferridge on the last lot to him, that he cannot say precisely how much money Ritchey paid him for ferrying the ~~the last~~ lot of Hominy, but thinks it was five dollars; that the Hominy brought over on the 5th and 6th days of January 1853 were delivered by him from the ferry boat on J. M. Kelly's flat boat, then lying above the ferry landing at Metropolis, Missis., that the day he brought over the last lot of Hominy, and before it was brought over the River, McBean handed to Witness a notice to hand to Ritchey when he should return to the Kentucky side, which he Witness handed to Ritchey on the Kentucky

Side that Ritchey Read the notice and said that it was damned hard that a man should have to pay his freight in advance.

On Cross Examination, Witness stated that he had no recollection whatever of Ritchey saying, at the same time, that there was a contract between him and McBean under which McBean was to Ferry his Harmony across the River. Yet Witness would not pretend to say that such language was not used, by Ritchey at the time. Witness further stated that Ritchey seemed to be very angry when he read the notice; Witness handed the notice to Ritchey on the Kentucky side of the River, before starting over with the Harmony. Witness further testified that the lot of Harmony brought over by Witness for Ritchey on the 2nd day of December 1852 consisted of twenty six barrels of Harmony, for which Ritchey paid to him Witness fifty cents Ritchey saying at the same time that it was enough. Witness further stated that he had no knowledge of any contract between Ritchey and McBean for ferrying Ritchey's Harmony from Kentucky to Indiana.

The plff then introduced William McHewell, who after being sworn testified that it was on New Years day that a barrel of flour in barrels was found floating in the Ohio River; he knew it was on New Years day, because Mr Jack said the flour was a New Years gift.

The plff then introduced Valentine Owens who after being sworn stated that he knew nothing about Ritchey's circumstances as re-

gards property of any kind. - William Sanders a witness introduced by plff said he knew nothing about Ritchey's circumstances. J. D. Crittenden was then recalled by the plff. and testified that Ritchey was the owner of a farm in Kentucky, that he did not know what it was worth, but it was pretty good farm, that there was a log dwelling, and a log barn on it. Plff introduced William W. McGuire who was sworn and testified that he was acquainted with Ritchey, and that Ritchey owned a farm across the Ohio in Kentucky, that his dwelling house is a log house double, and with log chimneys, & that there were a log barn and one or two log cabins on the place. Could not say what Mr Ritchey was worth, he is a common farmer. -

The Defendant then called J. C. Roberts Esqr on the stand who was duly sworn and testified that the Defendant Ritchey appeared before him as prosecuting witness against the plaintiff McBean, upon the trial of McBean before him for perjury and that Ritchey was duly sworn by him and testified, on the said trial that there was a contract made between him and McBean under which McBean was to ferry his, Ritchey's, Honyony across the Ohio River from Kentucky to Minnis for five cents per Barrel or Sack and that the contract was made by him with McBean at McBean's Office in the Town of Metropolis, in the night time while they were watching some flour that was lying near the ferry landing, and that the oath of McBean before Esqr. P. Summer about

the Contract, was untrue — The Defendant then introduced John W. Foster; who after being duly sworn testified that he went down to McBean's ferry boat, and that McBean said "We agreed to bring ^{it} over for five Cents, but now I will be damned if he shall not pay Ten Cents; that there were Panels and Sacks on the ferry Boat at the time, and that she was taken up to J. M. Kelly's boat, at least he saw the ferry boat at the side of Kelly's boat as he thought. He could not say precisely what day of the month of January 1853 it was when McBean used the words which he gave in Evidence, he had thought it was about the 4 day of January 1853 but perhaps he was wrong in that — but he was certain that it was between the 1st day of January 1853 and the 6th day of that month; that he was positively certain that McBean said "We agreed" to bring ~~it~~ it over for five Cents per Panel or Sack, but now by God he shall pay Ten Cents — And upon cross examination he ^{said his suggestion was a thing very possible, that he might be mistaken} said that he might be mistaken in the present case, but that he was never more positive of any thing in his life than that McBean used the words which he had given in Evidence. He further stated that he did not know to Whom the Conversation was addressed, but thought that McBean used the words to his ferryman Martin; that there might have been some four or five, or six persons present on the ferry boat.

The defendant then introduced John Austin who was duly sworn and

Testified that two Lots of Harmony were received from the ferry Boat of William McDoan in the Early part of January 1853 at the flat boat of J. M. Kelly which was then lying at Metropolis Mo. above the ferry landing; the harmony belonged to the defendant W. H. Pickens.

This was all the Evidence in the Case

Whereupon the plaintiff moved the Court to instruct the Jury as follows.

1st The mere belief of a prosecutor that he had good cause for commencing the prosecution is not a sufficient defence when the facts and circumstances under which he acted, show that there were no circumstances tending to show guilt, and that his belief was founded in mistake, malice, ignorance or negligence.

2^d When the prosecution is set on foot and investigated by the Court, and when that investigation results in the discharge of the defendant, and when the Cause has not been revived, but remains at rest, such a discharge is prima facie evidence of the want of probable cause.

3^d If the Jury find for the plaintiff and at the same time believe from the evidence that the defendant is in a peculiar Circumstances in life, that is proper Consideration for the Jury

4th The Court instructs the Jury that the

affidavit in the case filed by defendant before Squire Roberts performed all its functions, When the Warrant was obtained and cannot be considered by the Jury, as Evidence showing probable Cause,

5th If the Jury believe from the Evidence that Mr W. Nickie caused William McDear to be arrested, and tried for perjury, and that defendant was discharged on a Judicial investigation, and that the prosecution is at an End, and that the same was instituted maliciously and without probable cause, then the Verdict ought to be for the plaintiff, and in such case the Jury are to find the Damages at any amount under the evidence not exceeding the amount claimed in plaintiffs declaration.

Whereupon the defendant asked the Court to instruct the Jury as follows

William McDear &

vs

William W. Nickie

} Case for malicious prosecution

1st The Defendant by his Counsel asks the Court to instruct the Jury, That unless they believe from the Evidence that the Defendant prosecuted the plaintiff before Esqr J. C. Roberts upon a charge of perjury and that he so prosecuted the plaintiff maliciously and without reasonable or probable cause to believe the plaintiff guilty, they must find the defendant not guilty.

2nd If the Jury believe from the Evidence that the defendant prosecuted the plaintiff on a charge of perjury and that he had Reasonable or probable Cause for believing him guilty they ought to find for the defendant not guilty. — — — — —

3rd This Cause is unlike a prosecution in the name of the people for perjury and it is wholly immaterial whether McBean was guilty of perjury or not, if the defendant believe him to be guilty and prosecuted him on reasonable and probable ground of belief of his guilt, they should acquit the defendant.

4th It is the policy of the law to encourage prosecutions for crimes, and to protect all persons who honestly prosecute offenders, or supposed offenders, in all cases where there is reasonable or probable cause for the prosecutors to believe them guilty, and if the Jury believe from the evidence that the defendant had probable Cause for the prosecution of McBean, the law protects him and they ought to find the defendant not guilty. — — — — —

5th Although the discharge of McBean by the Justice, Roberts, is prima facie evidence of want of probable Cause, yet if the Jury believe from ^{all} the evidence before them that Ritchie had Reasonable or probable Cause to believe McBean guilty of perjury when he prosecuted

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him, they are bound to acquit him
the Defendant.

6th the Evidence of Ritchie before
J. C. Roberts, on the trial of McBean
as detailed hereby Roberts is Evidence
for him Ritchie.

Whereupon the Jury retired to Con-
sider of their Verdict and returned
into Court with the following Verdict
"We the Jury find the defendant
guilty, and assess the plaintiff's dam-
ages at \$500.00 and the defend-
ant then and there entered a motion
for a new trial for the following rea-
sons, 1st Because the Verdict is
Contrary to the ~~Evidence~~ Law
2nd Because the Verdict is Contrary
to the Evidence
3rd Because the Verdict is Contrary
to both Law and Evidence.
4th Because the Verdict is against the
Instructions as to the Law as given to
the Jury by the Court.

And the Court then and there over-
ruled the motion for a new trial, and
gave Judgment for the plaintiff, to
which Ruling by the Court the defend-
ant then and there excepted & prayed
that this his Bill of exceptions might
be signed and sealed in open Court.

Which was accordingly done.

William K. Fairbank

State of Illinois }
Massac County } Set

I James Elliott
Clerk of the Circuit Court in and
for said County of Massac do hereby
certify that the twenty-six pre-
ceding written pages contain a
full Transcript of the Record
and proceedings of the Cause
therein mentioned, as fully and
completely as the same appears
in my Office.

In Witness of Which I here
to set my hand and the
Seal of said Circuit Court
this 28th Day of October 1854
James Elliott ck

Clerks fees for making Record

7280 Words @ 10c per 100 = \$7.28

Certificate & Seal .35

\$7.63

No 76

W. W. Rieker

by

W. McBean

Filed H. October

1854.

H. D. Preston clerk

By H. Johnston Secy



Supreme Court November term A.D. 1858
William McBeane vs. Ritchie

William McBeane depts in error
into Massac
and that William M. Ritchie was Comers
by Richard, S. Nelson his attorney
and says that there is error in the record
and process aforesaid, because he says
the Judgment rendered therein by the
Circuit Court of Massac County aforesaid
was rendered against him the said
and in favor of him the
said William, whereas the Judgment
aforesaid ought to have been rendered
in favor of him the said Ritchie and against
him the said William M. Beane

and in assigning errors
specified on the record & process aforesaid
in the said paper avers that the Circuit
Court of Massac County erred
first because the said Court did not
arrest the Judgment rendered therein
against him the said plaintiff for \$500 damages
& costs

Secondly the said Circuit of Massac County
erred in not granting him the said plaintiff
a New Trial in the above Cause.

because 1st the verdict ^{of the jury who tried the same} is against
Law.

2nd because the verdict of the jury who
tried the Cause in the said Circuit Court of
Massac County is against evidence
3rd because it is against Law and
evidence

Widely. The Court erred in giving the instructions ^{asked for} on behalf of the defendant and refusing to give those asked for on behalf of the plaintiff.

4th The Court erred in refusing to grant a new trial because the plaintiff in the Court below failed to prove that the prosecution for which this suit was brought was ^{so} without any reason at all or probable cause whatever.

5th Because the deft in Circuit below did show that he had probable cause for instituting said suit against the plaintiff in the Court below.

and so the ~~aff~~ ^{aff} affirmed by his attorney a jury in fact says that for the reasons assigned the Judgment of the Circuit Court ^{is} affirmed is erroneous and that in the execution thereof the Circuit Court manifestly erred & that for these and other causes in this record & process apparent the Judgment aforesaid ought to be reversed & this the plaintiff is ready to accept of.

William B. McKie plaintiff

by
Hub. S. Loomis
his attorney

Forinder in error

Logan & Lemons

Atty for deft in error

~~For the~~ ~~of the~~ ~~January 1854~~
~~and attached to~~

the paper January
8th 1853.

St. John's all

State of Illinois,
Supreme Court. 34

The people of the State of Illinois to the
Clerk of the Circuit Court of Massac County
Greeting.

Because in the proceedings, and also in
the rendition of the judgment, of a plea which
was in the Circuit Court of Massac County,
before the Judge thereof, between William McLean,
plaintiff, and William W. Richey, defendant,
it is said that manifest error hath intervened
to the injury of the said William W. Richey, as
we are informed by his Complaint, the record
and proceedings of which said judgment remain
on the records and files of the Circuit Court of
Massac County. We therefore ^{hereby} command you that
you certify a full and complete record of the
judgment and proceedings in said cause
into our Supreme Court of the State of Illinois,
at Mount Vernon, before the Justices thereof,
to the term of said Court to be begun & holden
on the second Monday of November next, &
that correction of the errors aforesaid may be
made in due form and manner, according to
law, and being fail not.

Witness, the Hon. Walter D. Scates,
Chief Justice of our said Supreme

Court, and the Sub thereof, at
Munster, this 11th day of August,
in the year of Our Lord one
thousand eight hundred and
fifty five.

Noah Johnston
Clerk of Supreme Court

W. W. Richey
W. J. Wint of arms
W. M. W. Breen

Tested 11th Augth 1855

A. Johnston Ck

STATE OF ILLINOIS, }
SUPREME COURT. } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Massac* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Massac* County, before the judge thereof, between *William McBean*

Plaintiff and *William H. Riskey*

defendant, it is said that manifest error hath intervened to the injury of said *William H.*

Riskey as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *William McBean*

that *he* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *William McBean* notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *31st* day *October* in the year of our Lord, one thousand eight hundred and fifty-*four*

Timothy D. Preston Clerk of Supreme Court.
By A. Johnston D.C.



As commanded within I have this day
Served the within by reading the same to
William McBean this the 16th day of
November AD 1854.

George M. Grey Sheriff of Massac Co Ill
By Joseph F. Mears Dpy

Served	25
Return	10
	35

Index of 1854
of McBean etc

STATE OF ILLINOIS, }
SUPREME COURT. } ss.

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of *Massac* County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of *Massac* County, before the judge thereof, between *William M'Beane*

Plaintiff and William H. Richey

defendant, it is said that manifest error hath intervened to the injury of said *William*

H. Richey as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *William M'Beane*

that *he* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *William M'Beane* notice, together with this writ.

Matthias B. Seaton
Witness, the Hon. ~~Samuel A. Tilden~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *11th* day of *August* in the year of our Lord, one thousand eight hundred and fifty-five

John Johnston
Clerk of Supreme Court.



State of Illinois
County of Cook
In the year of our Lord
1835
I, the undersigned, Clerk of the Court,
do hereby certify that the within and
above named

John M. Lewis, of the County of Cook,
State of Illinois, is the owner and
possessor of the within and above
named

W. W. Peckham
W. W. Peckham
W. W. Peckham

~~John M. Lewis~~
John M. Lewis

Tested Sept. 1835
at Springfield Ill

Witness my hand and the seal of the Court
this 18th day of August 1835
John M. Lewis, Clerk of the Court
STATE OF ILLINOIS

Metropoli; Ill. Jan. 25th 1856.

Cal. N. Johnson
Clerk Supreme Court
Mount Vernon
Ill.

Sir,

You will please
issue your fee bill and execution for the costs
in the suit of Ritchie, in error, against McLean, in error
and forward to the Sheriff of this County for collection.

Respectfully

W. W. Ritchie

My father's copy
of the record - can't
be seen till April
is full & Richard -
when that is done
will attend to it.

Julia Foley 1837

A. Johnston Clerk

Metropolis Illinois
Jan'y 8th 1856

Chf of the Supreme Court
Mount Vernon.

Dear Sir -

You will
please send down the record of the
Case styled "W. H. Pitcher" def in error. vs
"Monte Bean" which case was tried and
remanded for a new hearing in the Kansas
Circuit. Mr. Demonds one of my Attys
informs me that the record should be
sent for. I therefore request you to make
out and return the necessary papers in
the case and let me know the charges
to be paid before new trial case be
had - and oblige respectfully
Sam Chidwell Sec

Wm H. Pitcher

Wm. M. Lee

Answered - saying
Opinion is not filed -
as known to is well
known to -
Jan 18. 1850

Note again 21 July -
stating opinion is
more than 10 years
over her head.
Costs about \$8.75

Filed Jan 18 1850
at Johnston. C.M.

125
175
\$300

112
8
1200

Metropolis March 25th 1856

Wash Johnson Esq.

Dear Sir
I oblige me by making
out copy and forwarding to this place either
to myself or Clk of C. Court. of the case
reversed and remanded. Styled W. W.
Ritchie vs. Wm. B. Bear diff in error. And
I will at an early day place the amount of
fees by mail in your hands.

I have a payment of 789¢ to make 10 of
Apr. now cannot do to spare any part of
the funds I now have on hand until after that
day. I send down the paper and you will
find it all right by the way. I want to summon
the villainous Scoundrel to appear and defend
at the next term of our Court if he should
in the mean time return from Memphis
Tenn

Yours Truly,

J. M. R. R.

Friday March

21. 1856.

A. Johnston clk

August 13th / 56
Metropolis City Ill

Ed Johnson, C. S. C.

Dear Sir

Please and find \$9.00
Enclosed which is your fee in the Richey & McLean
Case. I wrote to you some time ago and told
you I had it collected, But I did not want
to send it untill you requested me to do so
I received yours this morning with the papers in
the Steward & Howard Case, I handed the order
to the clerk as you requested

Yours &c

W. J. Brunner Sheriff Mc

L. P. Brown & Co.
all about. County.
Parting of 9. for the
This Office in County
Parting of M. P. Brown

8685-