

14374


No. _____

Supreme Court of Illinois

Van Winkle et al

vs.

Groze.

71641  7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

1874

No. 84.

Van Winkle

v

Boyer

State of Illinois
Third Grand Division

In Supreme Court
on Writ of Error to
Henry C. Cice, Const.

Adrian VanWinkle &
Margery VanWinkle, his wife
Plffs in Error

vs.
Sophia Rose
Dft in error

The judgment of the Court
below having this day been compromised &
settled, it is agreed that the above entitled
Cause be dismissed at the Cost of the plffs
in error.

Dated at Geneva, Ills, this 28th April A.D. 1862

A. Van Winkle
in pro. pers.

William S. Pleasant
Attys for dft in error.

84
Sup. Court.
3^d Grand Division

Adrian VanWinkle
et al., P^lff in error

vs.

Sophia Gose

Def^t in error

Agreement

Filed May 20. 1822

L. Leonard
Clerk

Judt. to be dismissed
by stipulation.

State of Illinois }
Henry County } ss

John S Buckles
being first duly sworn and his oath
says that he resides in the County of
Henry & State of Illinois and is well
acquainted with William Clawson &
Frederick P Brown of said County & State
who signed the appeal bond as sureties in
the case of ~~Ad~~ Sophia Grose vs Adrian
Bonwickle trying that he considers them
both responsible men - that he is
informed ~~that~~ & believes that said
Brown is worth over and above
all indebtedness from eight to ten
thousand dollars and that said
Clawson is worth over and
above all indebtedness from four
to six thousand dollars and that said
Bonwickle is worth from six to
eight thousand dollars over &
above all indebtedness

John S Buckles

Subscribed & sworn to before me
J. M. Smith a Justice of the Peace
in and for said County this 3^d
day of May A. D. 1861

J. M. Smith J. P.

STATE OF ILLINOIS, }
Henry County. } ss.

Clerk's Office, County Court.

J. Daniel Bourne, Clerk of the County Court, in and for said
County and State, do hereby certify, that W. Smith Esquire,
whose name is subscribed to the foregoing Certificate of acknowledgment, was, on the day of
the date of the said Certificate, to wit: on the 3^d day of April A. D. 1861
J. M. Smith Justice of the Peace
an acting Justice of the Peace in and for said County, duly commissioned and qualified, and as
such, duly authorized and empowered to take the acknowledgment of Deeds and other instru-
ments in writing, and that his signature thereto is genuine.

In Testimony Whereof, I have hereunto subscribed my name,
and affixed the Seal of said County Court, at Cambridge,
this 3^d day of April A. D. 1861

J. D. Bourne Cle



STATE OF ILLINOIS, SUPREME COURT,
THIRD GRAND DIVISION.
APRIL TERM, 1860.

ADRIAN VAN WINKLE and
MARGERY VAN WINKLE }
 vs. } *Appeal from Henry.*
SOPHIA GROZE.

- Page of Rec.* THIS was an action on the case for slander, commenced by ap-
1 pellee vs. appellant, March 23d, 1859.
- 2 Declaration in usual form.
- 6 and 7 Affidavit filed and leave to plaintiff to prosecute as a poor
person.
- 8 Sept. 29, 1859, amended narr. filed; words charged, "Sophia
Groze is a whore."
- 13 Plea of justification, that plaintiff was a whore, &c.
- 14 Replication to the country.
- 19 Trial; verdict for plaintiff for \$3,000. Motion for new trial
overruled.
- 23 Defendants, at the trial, claimed the right under the issue to
open and close the case. The Court ruled that the plaintiff had
the right to open and close, to which ruling defendants then and
there excepted.
- Plaintiff called *Philip Ott*, who testified that he had known
plaintiff six years; that she is between 18 and 19 years old,
never been married. Plaintiff has lived at Yorktown, Hoop
Pole Grove, and Geneseo, in this State; her mother is living—
resides with her son in Yorktown.
- 24 Plaintiff asked the witness this question,—“What are the pe-
cuniary circumstances of the plaintiff and her mother?” to which
the defendants objected. The Court overruled the objection and
defendants excepted. Witness answered, she is a poor widow
and they are poor folks. Plaintiff has always worked for a living.
- 25 *Whitfield Sanford* testified that defendants were worth \$15,000
or \$20,000.
- 25 *Alfred W. Perry* testified that defendants are worth \$12,000 or
\$15,000.
- 25 *Hattie Sayres* testified,—I heard defendant, Margery Van
Winkle, say two or three weeks ago, at Mr. Robert Cherry's
house, in conversation with Mrs. Cherry and others, that it would
be no job to prove plaintiff to be what she had called her. She

Page of Rec. was speaking of this suit. To the introduction of this testimony
 25 the defendants objected when it was offered. The objection was overruled and defendants excepted.

26 Plaintiff rested.

Defendants called *Robert Cherry*, who testified that at a party at his house, in December previous, he found plaintiff and a man named Brundige in bed together, in a bed-room adjoining the room where they were dancing, and that he ordered them out of the room and locked it, and that they then went up stairs; and

28 *Abraham Phelps*, who testified that on the same occasion he followed the plaintiff and Brundige up stairs, saw them get into bed together, and that they had sexual intercourse, and that Michael Cryle and Laurence Cherry were with him at the time.

31 *Michael Cryle* and *Laurence Cherry* testified to the same thing as Phelps.

32 *Geo. Layland* testified that he had seen plaintiff at night, from 11 to 2 o'clock, in different parts of the town, with different men.

33 *David Anderson* testified that he saw plaintiff and Brundige lying on the ground together, 50 or 60 feet from Cherry's house, on the night of the party spoken of by the other witnesses.

36 *Laurence Cherry* testified to same as Abraham Phelps, and in addition that he had sexual intercourse with plaintiff on the way home from the party.

41 Plaintiff called *Aaron Brundige*, who expressly contradicted the testimony of defendants' witnesses, so far as he was concerned.

Plaintiff's counsel asked witness this question,—Are the statements of Laurence Cherry and Michael Cryle, or any or either of them, in respect to your being in bed with plaintiff up stairs at Robert Cherry's true?

To which defendants objected. The Court overruled the objection, the defendants excepted.

49 The witness answered,—They are not in any respect. Plaintiff's counsel then asked this question,—Did you ever at any time, in Robert Cherry's house or out of and about it, have illicit intercourse with the plaintiff, or take any improper liberties with her? Defendants' counsel objected to the question. The Court overruled the objection, defendants excepted. Witness answered,—I never did.

46 The witness testified to a history of the occurrences at the dance spoken of by the other witnesses.

48—54 Plaintiff introduced *Wm. Seibel*, *Mrs. Ann Eliza Seibel*, and *Miss Hattie Sayers* and *Frank Edgecomb*, who each testified that they were at the dance spoken of, and whose testimony tended

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Page of Rec.

54 to corroborate the testimony of Brundige as to the occurrences of the evening.

This was all the testimony.

The Court, at the request of plaintiff, instructed the jury as follows :

- 56, 57, 58
1. The words "you are a whore," spoken by a person of a woman, are by law made actionable, and the law implies malice in the speaking thereof, and an intention that they should be believed.
 2. By the pleadings in this case, the defendants admit the speaking of the words charged in the plaintiff's declaration, and the law entitles the plaintiff to recover damages therefor in this action, unless the words so spoken are proved to the satisfaction of the jury to be true.
 3. In this case the jury will find a verdict for the plaintiff, unless they are satisfied, from the evidence, that the plaintiff is a whore; and it is not incumbent on the plaintiff to prove the malice of the defendants, nor actual damage to the plaintiff.—The law in such case presumes the existence of both malice and damage, unless the words are true.
 4. A witness may be impeached by his appearance on the stand, by inconsistencies and contradictions in his testimony, by the improbability and unreasonableness of his statements, by the interest he manifests in the case, and by his manner of testifying, as well as by contradictions by other witnesses, or proof of general bad character.
 5. If the jury are satisfied that a witness has in his testimony made any wilful misstatements, the jury may disregard his whole testimony.
 6. It is for the jury to determine the credibility of witnesses, and in determining it they may consider the relation of such witnesses to the parties or either of them, their conduct on the stand, the probability or improbability of their statements and their comparative means of knowledge of the facts of which they testify, as well as contradictions by other witnesses. And in this case, if the jury believe that the statements of any of the witnesses are unworthy of credit, by reason of the unreasonableness and improbable character of such statements, or by the contradictions in their own testimony or in the testimony of other witnesses, the jury have a right to disregard all such statements, notwithstanding the character of such witnesses may not have been proven by other witnesses to be bad.
 7. In this action the jury may rightfully consider the pecuniary circumstances of the defendants in fixing the amount of plaintiff's damages, which damages the jury may find by way of

Page of Rec. punishment to the defendants, as well as compensation to the
58 plaintiff.

8. If the jury believe from the evidence, that the defence in this case is false, and fabricated by a conspiracy to which the defendant is a party or privy, or that the original slander has been since repeated, they may consider those circumstances or either of them in aggravation of the plaintiff's damages.

To the giving of each of which instructions the defendants excepted.

59 The defendants asked the Court to instruct the jury as follows:

1. Under the issue made by the parties in this case, it is not necessary for the defendants to prove that the plaintiff was a *common prostitute* at the time of the speaking of the words charged in the plaintiff's declaration, but they are only required to show that she had been guilty of fornication prior to the time of the speaking of said words.

2. Fornication by an unmarried female person is the having illicit carnal intercourse with a male person, and one single act of the kind is sufficient to constitute fornication.

3. If the jury believe from the evidence, that the plaintiff had been guilty of fornication in a single instance, prior to the time of the speaking of the words as alleged in the plaintiff's declaration, then the jury should find for the defendants.

7. Whenever a witness is contradicted by other credible witnesses upon material facts, such as his never lying upon a bed in a bed-room with the plaintiff; that he was never so lying, either covered up or otherwise; that he was sleeping an hour, or any other material facts, such contradiction tends to discredit his whole testimony.

61 And modified the following instruction asked by defendants, to wit:

5. To sustain the defendants' plea of justification and make out a full and perfect defence to this action, it is not necessary that they should prove by positive testimony that the plaintiff (had been guilty of fornication) ^{was a whore} prior to the time of speaking the words as alleged in the plaintiff's declaration; but if the jury are satisfied by circumstantial evidence that such had been the case, then they should find for the defendants.

61 By striking out the words, "had been guilty of fornication," therein contained, and substituting therefor, the words "was a whore." To the refusal of the Court to give said 1st, 2d, 3d, and 7th instructions, and modifying the 7th instruction, the defendants at the time excepted.

The jury found a verdict for the plaintiff for \$3,000.

The defendants moved in arrest of judgment for a new trial.

Court overruled the motions severally, and defendants excepted at the time.

Assignment of Errors.

And now come the said appellants, by Knox, Eustace, and Reed, and say that in the record and proceedings aforesaid, and in the rendition of the judgment aforesaid, there is manifest error, in this, to wit:

1. The Court erred in refusing to the plaintiff the right to open and conclude the case, under the issue in the case.
2. The Court erred in receiving improper testimony offered by plaintiff.
3. The Court erred in refusing competent and proper evidence offered by defendants, to be received.
4. The Court erred in giving the first instruction asked for by plaintiff.
5. The Court erred in giving each of the instructions asked by plaintiff severally.
6. The Court erred in refusing to give each of the instructions asked by defendants, which were refused.
7. The Court erred in modifying defendants' 5th instruction.
8. The Court erred in overruling the motion for a new trial.
9. The Court erred in overruling the motion in arrest of judgment.
10. The Court erred in rendering the judgment aforesaid, in manner and form aforesaid.

POINTS MADE BY APPELLANT'S.

1. The defendants had the affirmative of the issue, and had the right to open and close the case.

Leatham vs Selker 11 Cases	814
Hunter vs Ayres 15 B Moore	217
Edelen vs Edelen 6 Maryland	288
Leary vs Le Carbon 9. N. W.	331

When the Defendant has the affirmative of the issue, he has the right to open and close the case.

Latham vs. Selkerk, 11 Texas, 314.
Hunter vs. Ayers, 15 B. Monroe, 217.
Edeleu vs. Edelen, 6 Maryland, 288.
Scavy vs. Dearborn, 19 N. H. 351.
Davis vs. Mason, 4 Pick. 156.
Goodille vs. Braham, 4 Tenn. R. 497.
1 Stark Ev. (5 Am. Ed.) 367, 368.
Sawyer vs. Merrick, 6 Pick. 478.
1 Chitty Pl. (6 Am. Ed.) 539.
Davies vs. Evans, 7 Car. & P. 63.
Rawlins vs. Desborough, 8 Car. and P. 321.
Lambert vs. Hall, 9 Car. and P. 506.
Pole vs. Rogers, 2 M. and Rob. 287.
Smith vs. Masters, 1 Car. and M. 58.
Chapman vs. Emden, 9 Car. and P. 712.
Cooper vs. Wakely, 3 Car. and P. 474.
Steinkeller vs. Newton, 9 Car. and P. 313.
Harnett vs. Johnson, ib. 206.
Cotton vs. James, 3 Car. and P. 505.
Burrell vs. Nicholson, 6 Car. and P. 202.
Jackson vs. Hesketh, 2 Stark. 518.
Hodges vs. Holder, 3 Camp. 366.
Aston vs. Perkes, 9 Car. and P. 231.
Tucker vs. Tucker, M. and M. 536.
Corbitt vs. Corbitt, 3 Camp. 368.
Brooks vs. Barret, 7 Pick. 94.
Faith vs. McIntyre, 7 Car. and P. 44.
Lees vs. Hoffstadt, 9 Car. and P. 599.
Warner vs. Haines, 6 Car. and P. 666.
Barker vs. Malcolm, 7 Car. and P. 101.
Mills vs. Oldy, 6 Car. and P. 728.
Brigham vs. Stanly, 9 Car. and P. 374.
Nolton vs. Burton, 1 M. and Rob. 578.
Rowe vs. Underhill, M. and Rob. 440.
Absalom vs. Beaumont, M. and Rob. 441.
Lewis vs. Wells, 7 Car. and P. 221.
Hudson vs. Brown, 8 Car. and P. 774.
Sandford vs. Hunt, 1 Car. and P. 118.
Lacon vs. Higgins, 3 Stark. 178.
Penon vs. Lee, 2 B. and P. 331.
Ree vs. Yates, 1 Car. and P. 323.
Rowles vs. Neale, 7 Car. and P. 262.

Atty for Appellants

2. The plaintiff had no right to give testimony showing the pecuniary circumstances of plaintiff's mother.

3. The questions asked the witness, Brundige, and objected to, ought not to have been allowed.

It was not the proper way to impeach this testimony & was not allowable for any other purpose

2 Selon 41 3 Selon 117

4. The first instruction asked by plaintiff was clearly wrong. The words were not actionable unless they were false, and that was the very question on the case.

<i>2 Johns 115</i>		<i>22 Miss 423</i>
<i>5 do 188</i>		<i>4 Blacky 496 & 463</i>
<i>2 McNeill & McCard 204</i>		<i>2 Starks or Hamels 127</i>
<i>2 Bibb Reg 473</i>	The 5th instruction is wrong.	<i>1 do 25</i>

The Court erred in refusing the 1st, 2d, and 3d instructions, and in modifying the 5th instruction.

The motion for a new trial should have been sustained. The evidence sustained defendants' plea.

*Glover, Cooky
& Campbell
atty for appellants*

180
Adrian Van Winkle et al
vs
Sophia Groze

84 - ~~184~~ 345
Adrian Van Winkle
et al vs
Sophia Groze

Abstracts &
Points

Filed Apr 19 1860
Leland
Clerk

Filed May 1 1861
Leland
Clerk

Motion for Supersedeas
Book for P.M. in Error
Motion Refused

Pleas before the Hon. J. Wilson Drury Judge of the Sixth Judicial Circuit in the State of Illinois at a Special Term of the Circuit court begun and held at the Court House in Cambridge in the county of Henry in said State of Illinois on the first Monday in the month of April in the year of our Lord one thousand eight hundred and fifty nine

Present Hon. J. Wilson Drury Judge
Purmel W. Sniff Sheriff
Thomas Wiley & Clerk

Know Ye that on the 23^d day of March 1859 a summons issued out of said court in words and figures following to wit

Summons
" State of Illinois }
" Henry County } To The People of the State of Illinois
" To the Sheriff of said county greeting: You are hereby
" commanded to summon Adrian Van Winkle
" and Margery Van Winkle to appear before the
" circuit court of Henry county on the first day of
" the next term thereof to be holden at Cambridge on the
" first Monday of April next to answer the complaint
" of Sophia Grose in a plea of case Damages \$5000,
" and have you then and there this writ, Witness J. Wiley
" Clerk of said court and the seal thereof this 23 day of March
" 1859 Seal Thomas Wiley & Clerk"

Upon which summons there appears the following return to wit:

Return
"I have served the within summons by reading the same

" to the within named Adrain Van Winkle & Margery
" Van Winkle this 25th day of March AD 1839

" P Mc Sniff Sheriff Henry Co Ill

" by J F Dresser Deputy Sheriff"

on the 25th day of March AD 1839

And afterwards to wit, the said plaintiff by her
attorney E N Gates files her declaration in said
cause in words and figures following to wit:

Declaration.

State of Illinois

Henry County } Circuit Court April Term AD 1839

Sophia Grose by E N Gates her attorney
complains of Adrain Van Winkle and Margery Van
Winkle the said Margery ^{then} and now being the
wife of the said Adrain Van Winkle in custody & c
in a plea of the case. For that whereas the plaintiff
before and at the time of the committing by the defend-
ant Margery Van Winkle of the several grievances
hereinafter mentioned was a person of good name
credit and reputation and deservedly enjoying the
esteem and good opinions of divers persons

Yet the defendants well knowing the premises
but the said Margery Van Winkle wife as aforesaid of
the said Adrain Van Winkle contriving and wickedly and
maliciously intending to injure the plaintiff in her
good name and to bring her into public scandal
and disgrace with and amongst divers persons to
whom she was in any wise known and to cause it to
be suspected and believed by those persons that she
was unchaste heretofore to wit on the twenty first day
of March in the year of our Lord one thousand eight

3
hundred and fifty nine at Geneseo in said county
and State of Illinois in a certain discourse which
she the said defendant Margery Van Winkle then and
there had in the presence and hearing of sundry persons
of and concerning the plaintiff and of and concerning
the matters and things aforesaid in the premises afore
said the said defendant Margery Van Winkle in
the presence and hearing of said persons falsely and
maliciously spoke and published of and concerning
the said plaintiff the false scandalous malicious
and defamatory words following that is to say, you
meaning the plaintiff are a Hoer You also meaning
the plaintiff need not feel insulted for you are a Hoer
And the said defendant Margery Van Winkle wife
of the said Adrian Van Winkle as aforesaid further con
triving and intending as aforesaid heretofore to wit
on the tenth day of March in the year of our Lord one
thousand eight hundred and fifty nine at Geneseo in
said county in a certain other discourse which she the
said defendant Margery Van Winkle then and
there had in the presence and hearing of sundry other
persons of and concerning the plaintiff and of and
concerning the matters and premises aforesaid
the said defendant Margery Van Winkle in the
presence and hearing of said last mentioned persons
falsely and maliciously spoke and published of and
concerning the plaintiff the false scandalous
malicious and defamatory words following
that is to say she meaning the plaintiff is a Hoer

4
And the said defendant Margery Van Winkle wife as
aforesaid of the said Adrian Van Winkle still further
continuing and intending as aforesaid heretofore to wit
on the fourteenth day of March in the year of our Lord
one thousand eight hundred and fifty seven at Genesee
in the county of Henry and state aforesaid in certain
other discourse which she the said Margery Van Winkle
then and there had in the presence and hearing of sundry
other persons of and concerning the plaintiff and of and
concerning the matters and premises aforesaid the said
defendant Margery Van Winkle in the presence and hearing
of the said last mentioned persons falsely and maliciously
spoke and published of and concerning the plaintiff the
false scandalous malicious and defamatory words
following that is to say Sophia meaning the plaintiff
is a Horse. By means of the committing of which
said grievances by the said defendant Margery
Van Winkle wife as aforesaid of the said Adrian
Van Winkle the plaintiff hath been and is greatly
injured in her good name credit and reputation
and brought into public scandal and disgrace
and hath been and is shunned and avoided by
divers persons and otherwise injured to wit
at the county aforesaid to the damage of the
plaintiff five thousand dollars and therefore
she brings her suit

By E N Gates

Her atty

And Afterwards to wit on the 7th day of April
1839, ~~and~~ ^{it being} the 3^d day of the term aforesaid the
following proceedings were had in said cause

Sophia Grose

vs

In Case

Adrian Van Winkle

Margery Van Winkle

At this day came the plain-
tiff herein by Gates her attorney and the defendants
by Knowe & Reed their attorneys and this cause
now coming on to be heard the said defendants by
their attys make a motion for a rule on plaintiff
to file security for costs or show cause.

And afterwards to wit on the 13th day of the April
1839 it being the 9th day of the term aforesaid
the said plaintiff filed in said cause the following
affidavit & petition

State of Illinois Henry County } Circuit Court
April Term 1839

Sophia Grose

vs

Adrian Van Winkle
Margery Van Winkle

Philip Ott of said county makes
oath and says that he is acquainted with the plaintiff
in this case and that she is only a little over eighteen
years of age and an orphan having lost her father
when a child affiant also states that she is

6 poor is not possessed of any property to his knowledge that she has sustained herself by working out by the week for a living and has sustained a good character up to the time of the speaking of the words for which this suit is brought so far as this affiant knows

Phillip Ott

Sworn and subscribed before me this 13 April AD 1839

J. D. Riley & clerk

To the Honorable circuit court within and for the county of Henry and State of Illinois

The undersigned respectfully represents unto your Honor that she has commenced a case in your Honorable court and which is now pending against Adrain Van Winkle and Margery Van Winkle for Slander Your petitioner would also represent unto your Honor that she is informed that said defendants have appeared in your Honorable court and moved that your petitioner said plaintiff be required to give security for costs in said cause

Your petitioner would therefore represent unto your Honor that it is true that she is not worth much money or property but that she was possessed of a character when the said defendant Margery spoke and proclaimed the slanderous words of and concerning the petitioner charged in the declaration in said case which was more valuable to her than property or money and which she seeks to vindicate by said suit

Your petitioner believes she has a good
and meritorious case and if permitted to
prosecute the same will succeed in vindicating
her good name and compelling said defendants
to pay the costs of this suit. Petitioner would
further state that she is an orphan girl but little
over eighteen years and that she appeals to your
Honor to allow her to prosecute her said suit
as a poor person under the provision of the law
of this state for that purpose provided. And
your petitioner as in duty bound will ever
pray &c
Sophia Grose

State of Illinois {
Henry County }

Sophia Grose being duly sworn
deposes and says that the statements and all the sev-
eral matters and things set forth in the foregoing pe-
tition are true in substance and in matter of fact
as she verily believes

Sophia Grose

Sworn to and subscribed

before me this 17th day of April A.D. 1859

Phillip Ott J.P.

And afterwards to wit on the 26th day of April
it being the 20th day of the term aforesaid the
following proceedings were had in said
cause to wit

Sophia Grose
 vs
 Adrian Van Winkle
 Margery Van Winkle } In case

At this day of the term aforesaid this cause being again called, and cause having been shown to the satisfaction of the court, for ^{plaintiffs} not filing security for costs, leave is thereupon given that said plaintiff prosecute her suit as a poor person, and the said defendant by their attys enter their demurrer to Narr, which demurrer is withdrawn, and on motion of p[er]t[er] leave is given to amend Narr, and this cause stands continued by agreement to next term

And afterwards to wit on the 29th day of Sept^r AD 1839 the said Plaintiff by her attys filed amended declaration in said cause in words and figures following:

State of Illinois } To October Term AD 1839 of
 Henry County } the Circuit Court thereof
 Sophia Grose

vs
 Adrian Van Winkle
 and Margery Van Winkle } In case

Sophia Grose by Gates & Smith her attorneys complains of Adrian Van Winkle and Margery Van Winkle the said

9

Margery then there and now being the wife of the said Adrain Van Winkle in custody &c. In her amended plea in case says For that whereas the Plaintiff before and at the time of the committing by the defendant (Margery Van Winkle) of the several grievances herein after mentioned was a person of good name credit and reputation and deservedly enjoyed the esteem and good opinion of divers persons

Yet the defendants be knowing the premises but the said Margery Van Winkle wife as afore said of the said Adrain Van Winkle contriving and wickedly and maliciously intending to injure the plaintiff in her good name and to bring her into public scandal and disgrace with and amongst divers persons to whom she was in any wise known and to cause it to be suspected and believed by those persons that she was unchaste heretofore to wit on the twenty first day of March in the year of our Lord one thousand eight hundred and fifty one at Geneva in said county of Henry and State of Illinois in a certain discourse which she the said defendant Margery Van Winkle then and there had in the presence and hearing of sundry persons of and concerning the said plaintiff Sophia Crose and of and concerning the matters and things aforesaid in the premises aforesaid the said defendant Margery Van Winkle in the presence and hearing of said persons falsely and maliciously spoke and published to and concerning the said plaintiff the false and scandalous ma-

licious and defamatory word following that is to
 say "You are a Whore" speaking to and meaning
 the plaintiff Sophia Grose Also "You need not
 feel insulted for you are a whore" speaking
 to and meaning the said Sophia Grose plaintiff
 in this suit And the said defendant Margery Van
 Winkle wife of the said Adrian Van Winkle as aforesaid
 further contriving and intending as aforesaid heretofore
 to wit on the fourth day of March in the year of our
 Lord one thousand eight hundred and fifty nine at
 Geneva in said county aforesaid in a certain other
 conversation and discourse which she the said defend-
 ant Margery Van Winkle then and there had in the
 presence & hearing of sundry other persons of and
 concerning the said plaintiff Sophia Grose and
 of and concerning the matters and premises afo-
 said the said defendant Margery Van Winkle in
 the presence and hearing of the said last mentioned
 persons falsely and maliciously spoke and published
 of and concerning the said plaintiff Sophia Grose
 the false scandalous malicious and defamatory
 words following that is to say "She is a whore"
 speaking of and meaning the plaintiff Sophia
 Grose

And the said defendant Margery Van Winkle wife
 as aforesaid of the said Adrian Van Winkle still
 further contriving and intending as aforesaid
 heretofore to wit on the fourteenth day of March
 in the year of our Lord one thousand eight hundred

And fifty nine at Genesee in the county & State
aforesaid in a certain other discourse which the
defendant Margery Van Winkle then and there
had in the presence and hearing of sundry other persons
of and concerning the said plaintiff Sophia Crose
And of and concerning the matters and premises
aforesaid the said defendant Margery Van Winkle
in the presence and hearing of the said last mentioned
person falsely and maliciously spoke and published
of and concerning the plaintiff Sophia Crose the false
scandalous malicious and defamatory words fol-
lowing that is to say "Sophia Crose is a whore" mean-
ing the plaintiff Sophia Crose

By means of the committing of which said grie-
vances by the said defendant Margery Van Winkle
wife of the said Adrian Van Winkle as aforesaid
And the said Adrian Van Winkle aforesaid the plain-
tiff hath been and is greatly injured in her good
name credit and reputation and brought into
public scandal and disgrace And hath been and
is shunned and avoided by divers persons and
otherwise injured to wit at the county of Genesee afore-
said to the damage of the plaintiff of Five
Thousand dollars and therefore she brings suit
by Gates & Smith Pliffs attys

And afterwards to wit at the October
Term 1859 of said court and on the second

day thereof it being the 11th day of October the following proceedings were had in said cause to wit

At this day came the said plaintiff by Cases & Smith Wilkinson & Pleasants her attorneys and the defendants by Knorr & Reed Buckles & Carpenter their attorneys and this cause being called for the hearing of motions &c the defendants by their attorneys enter their demurrer to said, in words following to wit: "And the said defendants by Buckles & Carpenter & Knorr & Reed their attorneys come and defend the wrong & injury when &c and say that the said amended declaration of the said plaintiff filed in said suit and each and every count thereof is insufficient in law for the said plaintiff to maintain her aforesaid action against them wherefore they pray judgment &c" which demurrer is by the court overruled

And afterwards to wit at the term of court last aforesaid and on the 4th day thereof it being the 13th day of October 1839 the following proceedings were had in said cause

At this day of the term aforesaid comes the parties by their attorneys as aforesaid and on motion of defendants leave is given by the court for them to file their plea herein by next Monday at 2 O'clock P.M.

13

And Afterwards to wit On the 14th day of Oct
at the term aforesaid the said defendants file their
plea in words and figures following to wit

Sophia Crose

vs

Adrian Van Winkle

Margery Van Winkle

} Case

And the said Defendants
by Buckles & Carpenter & Knapp & Reed their
attorneys come and defend the wrong & injury
when &c and say Actio non because they
say that before and at the time of the speaking
and publishing of the said several words to of
and concerning her the said plaintiff as in the
said several counts of the said plaintiffs amended
declaration mentioned to wit on &c at &c the
the said plaintiff was a whore wherefore the said
Margery Van Winkle afterwards to wit at the said
several times in the said several counts mentioned
at &c aforesaid did speak and publish the
said words to of and concerning the said
plaintiff as in the said several counts men-
tioned as she might lawfully for the cause aforesaid
And this the said defendants are ready to verify
wherefore they pray judgment if the said plaintiff
ought to have or maintain her aforesaid action
thereof against them &c

Buckles & Carpenter & Knapp & Reed
attor for Defs

And afterwards, to wit at the term aforesaid and on the 24th day of Oct 1839 the said plaintiff by her attys file their replication to said defendants plea in words and figures following to wit

Sophia Crose
vs
Cecilia Van Winkle
et al } lease

And the said Plaintiff by Gates & Smith her attorney, comes and for replication to said defendants plea says Preclusion because she says that at the time nor before the speaking and publishing of the said several words to of and concerning the said plaintiff as conferred to have been spoken by said Margery Van Winkle in the said defendants plea to said plaintiffs amended declaration she the said plaintiff was not a Whore And that the said Margery Van Winkle might not lawfully speak and publish the said words to of and concerning the said plaintiff for the cause aforesaid and of this she the said plaintiff puts herself upon the country

Gates & Smith attys for Plaintiff

And the said defendants do the like

by Buckles & Carpenter &

Primo & Reed attys

for Defts

15
And afterwards to wit at the term aforesaid and
on the 14th day of November the following proceedings
were had in, said cause to wit

Sophia Grose

vs

Adrian Van Winkle

Margery Van Winkle

In Case

At this day of the term aforesaid
comes the parties as aforesaid by their attorneys and issue
being now joined herein It is ordered by the court
that a jury be called and thereupon to try this cause
came the jurors of a jury of good and lawful men to wit
Geo W Lane Geo B Phillips A M Randall H M Lewis Geo M
Reed John Shaw Robert Valentine Chas S Brown Elias
Heart Wm McCandless D A Ireland Keiram Gant
who were duly selected chosen and sworn according
to law to well and truly try this cause and a true ver-
dict render according to the law and evidence
And the jury having heard the evidence the argu-
ments of the counsel and all things to be addressed
herein retire to consider of their verdict, with
instruction from the court in words and figures
following to wit:

The plaintiff asks the court to instruct
the jury as to the law of this case as follows

- 1 The words "you are a whore" spoken by a person of a
woman are by law made actionable and the

Given

law implies malice in the speaking thereof and an intention that they should be believed

2

Given

By the pleading in this case the defendants admit the speaking of the words charged in the plaintiffs declaration and the law entitles the plaintiff to recover damages therefor in this action unless the words so spoken are proved to the satisfaction of the jury to be true

3

Given

In this case the jury will find a verdict for the plaintiff unless the jury are satisfied by the evidence that the plaintiff is a whore and it is not incumbent on the plaintiff to prove the malice of the defendants nor actual damage to the plaintiff the law in such case presumes the existence of both malice and damage unless the words are true

4

Given

A witness may be impeached by his appearance on the stand by inconsistencies and contradictions in his testimony by the improbability and unreasonableness of his statements by the interest he manifests in the case and by his manner of testifying as well as by contradictions by other witnesses or by proof of their general bad character

5

Given

If the jury are satisfied that a witness has in his testimony made any wilful misstatement the jury may disregard his whole testimony

6

Given

It is for the jury to determine the credibility of witnesses and in determining it they may consider the relation of such witnesses to the parties or either of them their conduct on the stand the probability or improbability of their statements and their comparative means of knowledge of the

17

Given

facts of which they testify as well as contradictions by other witnesses and in this case if the jury believe that the statements of any of the witnesses unworthy of credit by reason of the unreasonableness and improbable character of such statements or by the contradictions in their own testimony or in the testimony of other witnesses the jury have a right to disregard all such statements notwithstanding the character of such witnesses may not have been proven by other witnesses to be bad

7

Given

In this action the jury may rightfully consider ^{the} pecuniary circumstances of the defendant in fixing the amount of plaintiffs damages which damages the jury may find by way of punishment to the defendant as well as for compensation to the plaintiff

8

Given

If the jury believe from the evidence that the defence in this case is false and fabricated by a conspiracy to which the defendant is a party or privy or that the original slander has been since repeated they may consider those circumstances or either of them in aggravation of the plaintiffs damages

Defendants instructions

1

Refused as inapplicable

Under the issue made by the parties in this case it is not necessary for the defendants to prove that the plff was a common prostitute at the time of the speaking of the words charged in the Plffs declaration but they are only required

18

to show that she had been guilty of fornication prior to the time of the speaking of said words

Refused

2 Fornication by an unmarried female person is having illicit carnal intercourse with a male person and one single act of the kind is sufficient to constitute fornication

Refused

3 If the jury believe from the evidence that the Plaintiff had been guilty of fornication in a single instance prior to the time of the words as alleged in the Plaintiffs declaration the jury should find for the defendant

Given

4th If the defendants plea of justification is not sustained by evidence to the satisfaction of the jury that should not necessarily enhance the damages if the jury believe from the evidence that the defendant interposed said plea with the honest belief that they would be able to sustain the same by evidence on the trial

Given

5th To sustain the Defendants plea of justification and make out a full and perfect defense to this action it is not necessary that they should prove by positive testimony that the Plff was a whore prior to the time of speaking the words as alleged in the plaintiffs declaration but if the jury are satisfied from circumstantial evidence that such had been the case then they should find for the defendants

6 If the jury believe from the evidence that the plaintiff had prior to the time of the speaking of the words as charged in her declaration frequently and at divers

19
Quere
times been seen upon the streets and unfrequented
places with different men at late and unseason
able hours of night or under the fence with a
man out of her or on a bed with a man on
top of her such circumstances or any of them
constitute legal evidence in this case and
tend to prove that the plff was guilty of being
a whore

7th
Refered
Whenever a witness is contradicted by other credible
witnesses upon material facts such as his never
laying upon a bed in a bedroom with the plaintiff
that he was never so laying either covered up or
otherwise - that he was sleeping an hour or
any other material facts - such contradiction
tends to discredit his whole testimony

And afterwards to wit, at the term aforesaid
and on the 17th day of November 1839 the following
proceedings were had

At this day of the term aforesaid came the jurors
selected chosen and sworn as aforesaid and return
into the court their verdict in words and figures
following to wit "We the jury in the above en
titled cause find the issue for the plaintiff and
assess the damages at three thousand dollars
C S Brown Foreman" which verdict is received
by the court and ordered to be entered upon the
records in said cause. And thereupon comes
the said defendants by their attorneys and

and enter their motion in arrest of judgment and for a new trial. in words and figures following to wit

And the said Defendants come and move the court for an arrest of judgment in said cause for the reason that the declaration of said plaintiff in said cause and each and every count thereof are insufficient in law for the said plaintiff to maintain her said action against said Defendants

And the said Defendants come and move the court for a new trial in said cause for the following reasons to wit

- 1st The verdict of the jury is manifestly against the evidence
- 2 The verdict of the jury is contrary to the law
- 3^d The court erred in refusing instructions nos one (1) two (2) three (3) and seven (7) asked by the defendants and in allowing nos five and six asked by defendants
- 4th The court erred in giving the instructions asked by the plaintiff
- 5th The court erred in admitting improper evidence to the jury on the part of the plaintiff
- 6th The court erred in rejecting evidence offered by the defendants
- 7th Improper conduct on the part of the jury
- 8th The court erred in denying to the defendants the right to begin or to open and close said cause and in giving that privilege to the plaintiff

Buckles & Carpenter & Knox & Reed
attys for defes





21

And the court having heard the motions and being now fully advised in the premises Orders that said motions be & they are hereby overruled whereupon said defendants pray an appeal from the judgment of this court to the supreme court of the state of Illinois which said appeal is granted and the defendants allowed until the 2^d Monday of January next to file their bill of exceptions And it is further ordered by the court that they file their appeal bond herein in the sum of \$5000, with Frederick P Brown Henry McArthur & Wm Clawson as sureties which said bond with said security is filed herewith and approved by the court, which said bond is in words and figures following to wit:

" Know all men by these presents that we Adrian
" Van Winkle William Clawson Frederick P Brown
" and Henry McArthur are held and firmly bound
" unto Sophia Crose in the penal sum of five
" thousand dollars lawful money of the United
" States of America for the payment of which well
" and truly to be made, we hereby bind ourselves
" our heirs executors and administrators firmly
" by these presents Witness our hands and seals
" this 19th day of November AD 1839

" The condition of the above obligation is such
" that whereas the above named Sophia Crose
" did at the October Term AD 1839 of the circuit
" court of Henry county and state of Illinois

21 recover a judgment against the above bounden
Adrian Van Winkle and Margery Van Winkle
for the sum of three thousand dollars and costs of
suit in a certain suit wherein the said Sophia
Krose is plaintiff and the said Adrian Van Winkle
and Margery Van Winkle wife of the said Adrian
Van Winkle are defendants from which judgment
the said Adrian Van Winkle has prayed and obtained
an appeal to the Supreme Court of the State of Illinois
Now if the said Adrian Van Winkle shall well and
truly pay said judgment and all costs interest
and damages in case the said ~~damages~~ in judg
ment shall be affirmed and shall also duly prosecute
his said appeal then the above obligation shall be
void otherwise to remain in full force and effect

" A. Van Winkle 
" William Clawson 
" Frederick P. Brown 
" Henry McArthur 

State of Illinois }
Henry County } I Thomas Wiley, clerk of
the circuit court for said county hereby certify that
the foregoing is a true and complete copy of the
record of the foregoing case as appears of record
in my office Given under my hand and
seal of office at Cambridge this 8th day of March
A. D. 1860

Thomas Wiley, clerk
By W. D. Darymple, deputy

State of Illinois }
Henry County } p. Of the October Term A.D. 1859.
of the Circuit Court for said County.

Sophia Groze

vs.

Adrian Van Winkle &
Margory Van Winkle

Bill of Exceptions

Be it remembered, that on
the fourteenth day of November A.D. 1859 at-
and during the October Term of the said Circuit
Court upon the trial of the above entitled cause
the said defendants claimed the right, under
the issue therein, to begin & conclude, to which
claim the said Plaintiff by her Attorneys
objected, and the court sustained the objection
& permitted the Pltff. to begin & conclude, to which
ruling of the Court, the said Defs. by their Counsel
then & there excepted; whereupon a jury was
duly impannelled & sworn, and the said Plaintiff
to maintain the issue on her part, produced as
witness Philip Ott who testified as follows:
I reside at Yorktown in this County. I have known
the Pltff. ever since she came to this State, which
will be six years in February next. She has resi-
ded in this State, at Yorktown, Hoop Pole Grove, &
Genesee about half of the time at Genesee. I
think she is now between eighteen and nineteen
years of age. She has never been married. Her
father died when she was but three or four

years old; her mother is living and resides with her son, adjoining me, in Yorktown. The family came to Illinois from Albany County New York.

The counsel for the P'tf. then asked the witness what are the pecuniary circumstances of the P'tf. and her mother? to which the Deft's counsel objected, but the Court overruled said objection and allowed the question to be asked & answered, to which decision of the Court the said depts by their counsel then & there excepted. And thereupon the witness answered as follows, viz: She is a poor widow - they are poor folks - the P'tf. has always since I knew her, worked out for her living, by the week and so on. She is American born, but her father was a native of Germany and her mother of France.

Upon cross examination, the witness further testified as follows: My native country is France the P'tf. is a cousin of my wife. Yorktown is from twelve to fifteen miles from Geneseo. I have never resided at Geneseo. The P'tf. lived probably a year or two in the town of Loraine, where she first came to this country, with her mother & brother on a farm they rented there - then for a while at Geneseo - then a comrad of hers got married at Peoria & she went down there and worked for a short time - & also at Rock Island - the latter part of the time in this country at Geneseo principally.

I had nothing to do with getting up this suit. Mr Gates, her Attorney, told me there was such a suit and asked me if I knew the girl. The suit was brought before I ever saw him about it. I had nothing to do with looking up witnesses in this case.

The P^ly then called as a witness on her part - Whitfield Sanford, who testified as follows: I reside at Genesee in this county, & have resided there for about eight years. I am an attorney at Law I have known the def^t Adrian Van Winkle nearly ever since I came to Genesee and am acquainted with the reputation he bears as a man of means. I have always understood him to be a man of ample means, worth from fifteen to twenty thousand Dollars.

The P^ly next called as a witness Alfred W. Perry, who testified as follows: I have resided at Genesee in this county since the year 1838, but have been away several years. I first became acquainted with the Def^t Adrian Van Winkle in the fall of 1839, & have known him ever since. He has been generally reputed there to be a man of considerable means. I should think a fair valuation of his property be from twelve to fifteen thousand dollars.

The P^ly then called as a witness Nattie Sayres, who testified as follows. I reside at Genesee - am acquainted with the P^ly and with the Def^t Margery Van Winkle. I heard said def^t say -

two or three weeks ago, at Mr Robert Cherry's house in conversation with Mr Cherry & others, that it would be no job to prove Plaintiff ~~to be~~ what she had called her. She was speaking of this suit. The depts objected to any testimony as to what depts Margy said after the commencement of this suit, but the Court overruled the objection to which decision the depts, by their counsel then & there excepted.

The Plt's evidence in chief here closed. And the said Defendants, to maintain the issue, on their part, called as witness, Robert Cherry who being sworn testified as follows: I reside in the town of Phenix in this County four miles north of Geneva. I have known the Plt between a year & eighteen months. There was a party at my house last winter, shortly before Christmas. The Plt & a young gentleman were lying on a bed there, with some kind of a covering over them - a spread a quilt, or shawl. I requested them to come out of the bed room and they did so. I told the young gentleman that I did not like such things - that I did not allow it in my house, and they must come out of there. As near as I can recollect it was after midnight. I was pretty busy at the time but as well as I can recollect - they went up stairs, but I could not say certainly that they did. I think I locked the door of the bedroom after they came out. There were other parties at my house that

winter. I think the Plett was at one, earlier than this but I would not be positive that she was then. On cross examination the witness further testified as follows: I reside at a place called Pink Prairie in the town of Phoenix - have resided there between seven & eight years. I have been acquainted with Van Winkle in the neighborhood of fifteen years - intimately acquainted with him. I married his daughter - had been married to her seven or eight years at the time of this party. I had seen the Plett once before at a party at my house, that's all the acquaintance I had with her, though I have seen her several times. There were young people at my house on this occasion enough to dance several sets at a time. There were six in my own family - all at home that evening. An unmarried daughter of deft. was then. I can't tell whether more than one or ~~two~~ ^{awt.} Miss Hattie Saynes was there - she is a niece of deft. They danced until pretty near morning, perhaps quite till morning. Some were sitting around while others danced. There are five rooms down stairs - a kitchen - a square room (in which they danced), a room not furnished, or used, and two bedrooms. Up stairs there are two rooms, a large one and a small one, used thus far to put beds in. I think they danced some in two rooms, the square room & the unfinished room, but not a great while in the latter. I could not state -

within half dozen of the number of persons there
 we had supper. The young people men & women
 of the neighborhood were invited. I think there
 were between ten & twenty couples. I saw Pety
 and the young man in the west bed room; it is
 entered from the square room. The young man
 was Mr. Boundige. He resides generally about Geneva
 He drives the stage from Geneva to Keewauw. I have
 seen him here during this term of court. I think
 I saw him yesterday. I know he has been in this
 County since this term of court began. When I saw
 them they had their clothes on - the same that they
 wore during the rest of the evening. They were lying
 face to face. He was not taking any familiarities
 with her that I know of. I think no other person
 was in the room at the time. I was in there. The
 door into the square room was shut - I think,
 but not locked. They were dancing at the time
 in the square room. The party had not broken
 up. I think Mr. Fear was out there but am
 not certain. I told Boundige I wanted him to
 come out and stay in the room where they
 danced. The others did not confine themselves to
 the dancing room. The Sardin's things, shawls,
 Bonnets &c - were not in the room where
 Pety & Boundige were - I think Lawrence
 Cherry brought the Pety to that party & took her
 home but could not say positively I think

probably she left when the crowd took

probably she left when the crowd broke up, don't
recall when Bourdige left. Am not certain how
they went home. There was snow on the ground
but I could not say whether they came on wheels
or runners. I think most of the men's things were
put in the bed room up stairs that evening.

The said defendants then called as a
witness Abraham Phelps who testified as follows:

I know the plaintiff by sight, & have so known
her ever since the fore part of last winter. I
live at Robert Cherry's at present & lived there
last Christmas. I attended the dancing party
before last Christmas, & saw P'tf there -
saw her down stairs dancing - did not see
her come from any other room. She was in
the dancing room when I got there. I saw her
go up stairs with a man. They went to a
bed after she got up stairs, and got in bed
together. They covered up after they got the
covering over them I suppose he covered her -
I saw the gentleman on top of the girl and the
bed moving up & down. I could not state
exactly how far I was from them all this time
I followed them right up stairs and went to the
foot of the bed - & was in sight of them all the
time - I think it was after midnight. I left
them then in bed and came down.

On Cross-examine in store, the witness further
testified as follows: The man was Bourdige.

I have lived with the last witness, Robert Cherry, about a week this time, but worked for him in the summer - was with him at the time of the party, and had been with him for about a month or such a matter. I lived after that at the first house by his. I have not talked this over with Cherry at all. The party was sometime before Christmas - two weeks or more. I did not talk with Van Winkle, deft, about this. He has never conversed with me about it. There were other parties then that winter afterwards, but I don't remember any before it. I took part in the dance that evening. There were two sets a part of the time, and a part of the time only one. Four sets could not dance at once conveniently in the square room - one danced in that room and another in the other. There were ten or twelve girls and probably more boys then. The P.M. Sarah J. Maxwell, Mattie Sagers & Mrs Seibel were then - am not sure about - Easter Van Winkle, but believe she was also and a good many others that I didn't know. I took a quilt then & went home with her. I did not see the performance spoken of by the P.M. and the man down stairs. I followed them up & kept sight of them all the time. The stairs led from the square room to the

one up stairs when they went. There was no
candle lit up stairs. Could not say whether
there were two beds in the room or only one.
I know that the person she was with was
Brundige. I never saw the P. before. They
went to the bed, pulled down the covering &
got under it. They did not undress at all.
I went right up to the foot of the bed, I don't
know that he knew that I was there, but
I saw them go up, into bed, and she got
on her. They did not go into any room, but
the bed was right at the head of the stairs.
She had on a party dress, & wore hoops I should
think by appearance. I did not stay there
until the performance was over, but went
right down. I did not tell any body of what
I had seen, I don't remember that I ever told
any body of it. I don't remember whether
I afterwards saw them in the dancing room
that evening or not - don't know that I would
have been impressed ^{by} it, if I had. I was
not excited by it. Michael Oryh & Lawrence
Cherry went along with me up stairs, we
were there together & came down together.
There was no carpet on the floor up stairs
and none ~~was~~ on the stairs. I don't know
Mr. Sibel - don't remember whether I
looked to see if any body else was up stairs
at the time. ~~don't~~ didn't see any body there.

except those I have named. Cryle & Lawrence
& I danced during the evening. Lawrence
& I danced in jumps. I think Cryle did also.

The bed was on a bedstead - middling
posts - it was a straw bed - That was all
that I noticed of a suspicious character
on the part of the P'ty that night.

On re-examination by defendant's counsel this
witness further said that there were two women,
of unequal size up stairs - the stairs land on
the floor of the larger one, & right back of it
is the smaller

The defendant's next produced as a witness,
Michael Cryle who being sworn testified as
follows. I know the P'ty by sight, and have
between four and five years. I was at a dan-
-cing party at Robert Chazy's before last Christmas
in December I think. P'ty was there. The first
I saw of her with a man was up stairs - did
not see them go up stairs - first saw them
on the bed then. I was up at the head of the
within a step or two of the bed. They were cover-
ed up. I saw the motion of the quilt bobbing
up & down by the appearance he was on top
of the girl. I did not stay there any time -
perhaps half or not so long & then went down
stairs - Lawrence Chazy & Abraham Phelps were
along with me. This was about midnight -

On cross examination by P'ty's counsel this witness

On cross examination by Pltfs Counsel this witness further testifies as follows: I live at Pink Prairie, a little over three miles from Robert Cherrys - lived at Andrew Seabodys at the time of the spree - worked for John Chery and boarded at Robert Cherrys afterwards. I never talked of this with Robert Chery - never told him what I saw - nor Van Winkle, the deft. either. I thought the man was Brundige, but could not tell ^{for} certain. I knew Brundige by sight - had seen him a couple of times before the party. I did not see them go up - when I first saw them they were at the business & I left them at it. I saw them down stairs again that evening. They told me that was the man, but I knew the girl by her face - his face was not turned up.

The next witness produced by the defendant was George Layland, who being duly sworn testified as follows: I reside in Geneseo - I know Plt by sight - have so known her for about two years - most of that time she has been at Geneseo - I have seen her at several times, between eleven & ~~twelve~~ two o'clock at night - in different parts of the town in company with different men. I have seen her along the rail Road - saw her up at the grave yard about half a mile above town at that time of night - & in other streets. When I saw her, she was walking along - walking

straight on & talking together as people generally do. These times were prior to last March I don't remember seeing her with a man at any other times or places than those that I have mentioned. There was a board pile by some of the places. Cross-examination of this witness was waived by the Counsel for the Plaintiff.

Then defendants then introduced David Anderson who was sworn & testified as follows: I reside four miles north of Genesee - don't know the plaintiff - but have seen her - don't know as I know anything bad or good, in particular, about her chastity. I was at a ball at Robert Cherry's before last Christmas. There were two balls there - about two weeks apart. This was the last one before Christmas. Then I saw P'ty. then that evening I and two or three others went out to get something to drink. We had a bottle in the fence corner. I jumped over the fence & saw a man & woman lying on the ground some fifty or sixty feet from the house. This was in the early part of the evening but after dark. I couldn't say, certain, who the woman was, but afterwards I saw a young man & woman come in & asked Robert Cherry who the woman was. he said Sophia Gross. They followed me right into the

house. I saw her in the house afterwards, but not

house. I saw her in the house afterwards, but not since that night. I don't know as they were doing anything in particular, only the man was on top of her. No part of their persons was exposed that I saw. There was no snow on the ground.

On Cross-examination by the Plaintiff's counsel the witness further testifies as follows: I don't know that I could tell who that man was, he was near about the size of the man talked of here. I did not stay to do any business but went right in. They did not remain there over two minutes. I went into the kitchen, right south of where I was, by its north door & they went in by a north door, next to that by which I entered the kitchen, leading into the ball room. I then went around through a door from the kitchen into the ball room. When I jumped over the fence they saw me I suppose. After I got into the ball room, I saw the girl and asked Cherry who she was. I think I saw her come out into the ball room the man was close behind, I think, but am not sure that I saw him come in. The ball room is east of the kitchen. I came in twenty five or thirty feet ahead of them. I dropped at the kitchen door, and when I went in they were about ready to go in at the other. There was an interval of time during which I could not see them, after I got into the kitchen and before

and before I got from it into the ball room. I didn't care enough about the man to enquire particularly about him, only I noticed his size. I think she was dressed dark & that her dress was striped. She had on two wraps - she changed her wrap after that. The first one was dark & striped. She had on a green bag sun bonnet - no shawl or cloak I think when she came in. She wore a small concern around her neck, but I could not tell the color or pattern of it. She took it off in the house. She changed her wrap an hour or so afterwards to a light colored one, a white wrap with no figures in it. The ball had commenced before I saw them in the fence. I would not state with whom she came or went home, or what what company she was with while there - had seen her in the ball room before I went out to drink, probably half an hour before. One of the men that went out with me to drink went down the lane and the other went back to the ball room ^{as} I jumped over the fence. They were Thomas Cherry & Lawrence Cherry - Lawrence wanted to go down the lane to make water. I don't think they saw the man. Some boys were on side & some on the other side of the lane, at the time. The man & woman lay six or eight feet from the fence & parallel with it. I got over pretty nearly opposite to them, & was within two or three feet

opposit to them, & was within two or three feet of them before I saw them. It was not a dark night, nor very light. I am not nearsighted I could not distinguish their countenances nor their dress particularly, any more than that things looked darked. He had on dark pants & a light-colored coat - think he had on a white shirt. If anything like sexual intercourse had been going on I should have been apt to see it. I saw no white under clothes, either of him or her. I knew Broudige - knew him before that. Don't know that I would recognize that man if I saw him now (Mr. Broudige being requested by P. J. J. counsel here came forward & stood before the witness who being then asked answered) I think that is the man -

(The witness on cross-examination by defendant's counsel further testified) that there was a light in the ball room - that he (the witness) stood in the kitchen door till she went into the ball room, and the light from the ball room fell upon her as she went in - that the man was close behind her. That it was early in the fall, he thought, cold enough to have fires, that the doors were open part of the time - that there was fire in the kitchen but none in the dancing room - the door was sometimes open & sometimes shut.

The next witness on the part of said Defendants

was Lawrence Cherry, who being ~~sworn~~ sworn testified as follows: I reside in Pink Prairie, and have resided there between three and five years. I have known the plaintiff near a year or a little over, was at the ball at Robert Cherry's next before last Christmas, plaintiff was there, I first saw her, after my brother had driven her out of the bed room below, start to go up stairs with Mr. Brundage. I was in the square room at the time & followed them up stairs. Phelps & Coyle went along with me followed them up stairs till they went to bed, in a room at the right of the stairs. There is no door there - the stairs land right in the room. He went into bed & covered themselves up with a bed covering. I walked past the edge of the bed so as to be sure who they were - he was lying on the top of her. I did not see any motion, either of them, or of the bed clothes. I left them shortly & went down stairs, but was near enough to know & do know which of them was on top.

I waited on the Plaintiff to the Ball - we went in a sleigh - There was snow on the ground then was very good moonlight in the Chamber - it was between twelve & three o'clock -

We went in a large two horse sled with a lumber wagon box on. I went home with her in the same sled. She & I were in the hind end, &

the rest of the crowd was forward. The seats

the rest of the crowd was forward. The seats
were in the wagon bed. She and I laid down
a good part of the way going back. We had a
coverlet from one of these beds up stairs. She
and I had it to ourselves. I think some one
had illicit ^{sexual} intercourse with the plaintiff that
morning on the road home from the ball to
Genesee, because I seen it did. I did it my
self with Sophia Groze the plaintiff - (Upon
cross examination by the Plaintiff's counsel the
witness further testified as follows: My name
is Lawrence Cherry when I am at home. I
make it my home the biggest part of the time with
my brother Robert Cherry, and the balance with
my brother-in-law Bealy Phelps - the Father of
Abraham Phelps - who has been witness in this
trial. I have lived there between three & five years
last past - but have been off as high as four,
five & six weeks at a time.

I have known the Pltff. about a year first saw
her at a ball at Robert Cherry's from three to
six weeks before the one I have testified of.
The one at which these occurrences took place was
the third one before Christmas - don't remember
whether there was one after Christmas. The third
one I attended with the Pltff. - the last one he
had. She was then living at Mr. Sears in
Genesee, but was working at Mr. Martin's. I
don't know when she lived afterwards - don't

know of having lived at the defendants. I don't know anything about my Brother's driving her out of the bed room below except from what he told me - don't know of my own knowledge that she was in that bedroom at all. We followed them, P. H. P. & Bourdige close. They were about two thirds of the way up stairs when we were at the foot, and we kept right on. I saw them get into bed & walked right past the bed - he ~~creeped~~ crawled on her just as I past the ~~room~~ bed he did not regard my presence at all.

Abraham Phelps drove us out to the ball. Miss Hattie Sayres was along & Miss Margaret Davis - no one was with Miss Sayres. Minerva Burman got in ~~at~~ on the prairie a mile west of my brother's. There with plaintiff & myself were all that even in the sleigh going out. The first dance at my brother's was in September or October, the next was between two & six weeks afterwards - & then was a third before Christmas, how long it was before Christmas I can't say - nor how long after the second. Plaintiff was at the first and last - not at the second I think. I don't know that there was a dance at Cambridge - the night of the last one at my brother's. I waited on the P. H. P. to the last dance she attended at my brother's and it was at that time that I saw the scene up

and it was at that time that I saw her come up
stairs with Bourdige. I went home with her from
that party - Abraham Phelps & Minerva Morrison
his partner, Joseph Phelps & Margaret Davis,
Joseph Jackson & Esther Van Winkle, and the
Plain tiff & myself were in the sleigh together
- or going home. The weather was pretty cool.
I believe there was a little hay in the wagon
bed, but am not certain we sat on the hay
if there was any, but if there was none then
we sat on the wagon bed. I didn't see that
the party leaned up against anything in par-
ticular - noticed that they were pretty well crow-
ded in at the forward end, but can't remember
whether they sat with their backs to the sides of
the bed or out - didn't notice that Plain tiff
& I had covering. I had a coverlet - did not have
one going out. They seemed to be all sitting
then - they had ^{no} occasion to crowd themselves
for our convenience - think Joseph Jackson
did not sit - but laid across the lap of some
of the others. I had room enough - rather
more than my share of the wagon bed. I did
not inform them that I wanted a wide berth
for an reason. If I had any outer clothing
on it was an overcoat, but I can't remember
as to that. I must generally make preparation
of that kind, & think I did on that occasion.
Can't tell as to the others, for I wasn't noticing.

I believe the Plaintiff had on a shawl. She was dressed for a party. I cant tell you whether she had on hoops or not - did not. Might have known then but cant remember now. I just crawled on top of her & went to work stretched out at full length

The bed stood at the right of the head of the stairs the moon light was all we had to see by - it was bright, I could distinguish them easily. There are two windows to that room, on the south side. I didnt notice whether the moon could be seen from the windows, but it shone bright in the room. I think I danced every time my number was called that night - didnt sleep any. Plaintiff danced a number of times (on examination by defendants counsel the witness further stated) Abraham Phelps drove, going home, & sat on or close to the foreboard of the sleigh.

The testimony on the part of the said Defendants, & in answer to the plaintiffs, rebutting called Aaron Brundige who being sworn testified as follows: I reside at Genesee - I have resided there between three & four years last past. I know the defendants. They reside at Genesee, & are there when I went there. I am slightly acquainted with plaintiff. I was at two dances at Robert Chorges last fall &

winter about five or six years since - cant

winter about five miles from Genesee - Cant-
state which two of his parties they were - the only
ones I attended there. The first was in October
or November - I think the latter part of October
I went to it with Miss Esther Van Winkle, a
daughter of the defendants, & returned home
from it with her. It was not very cold that
evening. I saw the plain tiff at that party -
did not see David Andersson there. I know
him - saw him here testifying as a witness in
this trial - have known since some time
in the year 1857 - I knew him before this party
& presume he knew me. He had called me by
name. I had been clerk in Mr. George Cowles
store in Genesee, & he had traded there consid-
erably. I went there as a Clerk in the spring
of 1857. On the occasion of that party I was
out in the fence corner or any when out of doors
lying down or sitting down with a woman
I was not in the lane fifty or sixty feet from
the house in the lane or on either side of the
lane with any woman, after I got there.
Don't but I was on the stoop to wash & that
girls were there, & don't know that any were
there. Plaintiff and I were not out in company
that night any where. I don't know whether she
was on the porch, or not when I was. ~~She~~ I
never was lying or sitting on the ground with
plaintiff at any time, at Robert Cherrys.

I heard very little of the testimony of David Anderson in this case yesterday. I saw the plaintiff that evening in the room when they danced - did not see her when she came nor when she left - did not see her any where else than in the house.

I went to the second dance then, some four or five weeks after the first, but I could not be particular as to the time - with Job Hunt & Frank Edgcomb - in ladies in our company - we got there not before nine o'clock I should think. They were dancing when we got there I believe. We stayed until they quit dancing - about three o'clock in the morning.

I was in a room with a bed in it down stairs, but do not know whether the plaintiff was or not. I was in the bedroom probably a dozen times that night - we went out of the north East corner of the square room into the bedroom - in it were a ~~bureau~~ bureau, stand, a chair or two and good deal of the surplus clothing of the people present - the door was kept open. I did see it closed - there was a light in it when I was - a candle I think but am not certain. They were running in & out of the bedroom - whenever a sett came off the floor a number of them would go in there.

I was never ordered or requested by Rob. 101

I was never ordered or requested by Robert Cherry to come out of that room that I know of. He did not charge me with any impropriety.

(The Counsel for the Plaintiff then asked the witness to state the circumstances under which he was in that bedroom and who, if any person was in there with him any time during that evening, to which questions defendants Counsel objected, but the court overruled the objection to which decision of the court overruling said objection and allowing said questions to be put to the witness, the defendants, by their counsel Chew & there excepted - and thereupon the witness stated). The first time I went in, I went to leave my coat & shawl, I could not say where next - it was a common place to come in & out - they were sitting on the bed, some on the chest - some on the chairs. I don't recollect that I was at any time that evening, lying, sitting or reclining on the bed with Plaintiff. I was never lying on or in that bed with her, with cloak & shawl or other covering over us, unless when I was asleep. I was asleep there, perhaps an hour, with Mr. Willis. I never was with her on that bed with the door shut. I think I sat on the bed with her at the previous party, believe I was lying down. I went in with an another lady. Two or three or four others certainly were ⁱⁿ there. We thought

we would have as much room as any & crowded down crossways of the bed. The Plaintiff came in & sat down between me & the other lady. I raised up put my hand on her shoulder. She did not like it & moved to the other side & went to talking with another gentleman. She remained there some time & then went out. Mr Willis, Hattie Sayres & Mr Sible were in there when we went in. The plaintiff was in there probably half an hour or more. The door was open & they were dancing in the other room. Plaintiff came in alone. Hattie Sayres was there all the time that Plaintiff was. I don't remember whether the other three were all there during that time or not. I did not lie down with the Plaintiff. Some were trying to get asleep, & some were making a noise to wake them up & get their places.

I was on a bunk up stairs with the plaintiff at the first dance, a bunk of buffalo robes & clothing. We were not alone. I went up alone, & found the Plaintiff & Miss Esther ~~was~~ ^{were} winkle there on the bunk. When I left the ^{bed} room below. I went out enquired where Miss Esther was. being told that she was up stairs, I went & found them there, & began to pull the buffaloes & clothing off from them.

They said if I would let them alone they

They said if I would let them alone they would come down. I went down & they soon followed. Mr Sible was on the bed up there I think I spoke to him, he was awake. No impropriety occurred up there on that occasion that I know of. I never was up there lying on ~~the~~ a bed with the Plaintiff. I never pulled down the clothes & got into bed with her there. I never was on a bed with her up stairs.

I heard a part of the testimony of Lawrence Cherry & Michael Cryle in this case in reference to my being in bed with Plaintiff up stairs at Robert Cherry's. (The Plff's Counsel then asked the witness the following question: Are the statements of said witnesses ~~true~~ or any, or either of them, in that respect; true in fact as applied to you & the Plaintiff?

To which question the counsel for the defendants objected, but the court overruled their objection & permitted said question to be put, to which answer of said Court the said defendants by their counsel then & then excepted. Thereupon the witness answered: They are not in any respect.

The Plaintiff's counsel then propounded to said witness the following questions to wit: Did you ever at any time in Robert Cherry's house or out of & about it have illicit inter-

course with the Plaintiff or take any im-
proper liberties with her

To which said question, the Defendants Coun-
-sel objected, but the Court overruled the
said objection & allowed said question to
be propounded to which said decision of
the said Court the said Defendants by their
Counsel then & then excepted, and then
upon the said witness answered the same
as follows: I never did, sir!

On Cross examination by defendants counsel
said witness further testified as follows:
It is probably a year & a half ago that I
first became acquainted with the Pltff.
though I have no recollection ^{at present} of speaking
to her before the time of the first dance at
Cherry's. All that I have testified to about
occurrences in the Chamber relates to the time
of that first dance about the first of Novem-
ber. There was no snow on the ground. I do not
know that the Plaintiff was out in the
lane fence ^{that night} with a man about my size. I was
before twelve o'clock that I lay down on the
bed & slept an hour or so. I don't know where
she was, or what she was about during
that time. That was at the last dance that
I got there late & lay & slept. We left guesses
about dusk for the first dance. Miss Emory

was the lady that I took into the bed room & laid down cross ways with. Then were three other ladies & one gentleman in there then. I had danced with the Plain tiff before (that evening) she came & sat down next to me her clothes touched me. I had no particular reason for putting my hand on her shoulder. When I did it she got up & went to the other head of the bed. I was not up stairs the second night. There was a bed or two up then besides the bunk. There was snow on the ground at the time of the second dance. Some came in sleighs. I slept an hour or so on the bed that night. I danced part of a sett I slept, and once certainly afterwards. I had put on my overcoat to go home, but afterwards took it off & danced. I left about three o'clock I should think. Don't know that I didn't dance more than once ~~afterwards~~ sleeping but think not. The balance of the time, I sat around & talked to one & another. I believe I have a distinct recollection of what I was doing - was out of doors a number of times - at the barn & where they kept the horses. I did not say this week that I was out at this second dance. It was reported to me that some one had testified that I was there at a dance on Christmas eve, as I understand,

& I said I was sick at that time. Hunt & Edgecomb returned with me. A sleigh followed behind us containing Mr. Willis & Mattie Sayre - there were no others with us.

Cherry never to my recollection asked me to come out of a room in his house.

He had rations with us that second night & there was plenty there, but I was not very full when I left home & did not use any. I was asked this noon, after court adjourned, to come into a room with a number of persons, two of whom I suppose, are witnesses for Plaintiff in this case. I was going along the porch of the Cambridge House - they were in the sitting room & rapped on the window as I passed. I went in - & there Mr. Sibel, Miss Sayre & Miss Anderson with myself went up stairs into a room, & had some conversation as to what I had testified about going out and what occurred in the bed room down stairs on the occasion of the first dance.

The Plaintiff then called as witness on her behalf William Sibel, who being sworn testified as follows: I was at a dancing party at Robert Cherry's last winter when Mr. Bourdige, the Pltff - Miss Esther Vandewinkle & others were present. I was up stairs at a time when Bourdige & the Plaintiff were there. I was around until about twelve o'clock, when being tired I asked Cherry for a bed &

He lit a candle and showed me up. After I had laid awhile the plaintiff & Miss Van Winkle came up - They came to my bed, & finding that no place for them, got together the buffaloes & clothes & with them made a resting place. Pretty soon after Brundige came up, & wanted them to go down to dance - they wanted to sleep & not to go down - he fussed around awhile & they promised to get down, if he would leave them alone. He then left them & went down & they pretty soon followed. There were two beds in the room - the other one was occupied by a son of Dr. Henshaw & a Mr. Hopper. They were there when I went up, but left before me. I could not say certainly whether they went down before the girls did, but think they ^{were} then still there. The girls remained up then some twenty or thirty minutes probably. I know when Brundige came up. He stayed but a little while, & made a good deal of noise pulling off the clothes & talking back & forth with the girls. This was a short time before Christmas, & was the only party I ever attended there. I think there was no snow on the ground. I went in a wagon.

On cross examination the witness said: I could not swear whether this was in November or December last; it was not quite a year ago. It was light enough for me to distinguish them two. There was no candle. I was sort of sleep & sort of not - didn't know when the two men in the other

bed left. Brundige was noisy - but no great noise - he was trying to get the girls up.

I don't know whether he brought either of the ladies to the party. I saw him below, before I went to bed, dancing with ^{the} others. I was only in the dancing room & up stairs. I am positive, I saw him dancing think at least three times, that is, from the time he came till I went to bed. Don't know what he danced right along, nor what sets he danced - when he began nor when he stopped.

The next witness called by the said Plaintiff was Ann Eliza Seibel who being sworn testified as follows: I was at a dance at Robert Cherry's last winter fall - Can't tell the time precisely I saw the plaintiff there. They had other dances then afterwards, but this was the only one I attended. I went with my husband, the witness who just now testified. I don't know that Plaintiff was there at others. The plaintiff wore a dark De Saine dress, with a black silk basque - there was a diamond figure in the dress - black, red & whitish - no flower in it - no stripes on her dress. She had ^{on} a yarn cap (called a rigolletti) on her head - it was dark red, with a blue or black roll in front - it was knit - something like men's comforters. I did not see a green baize sun bonnet or a bonnet of any green material. She did not change her dress that evening. I got there first

saw her come - when she first came into the room
saw her go - & saw her frequently during the even-
-ing) - She had on the same dress all the time. If
she went out of doors, either alone or with a man
I did not see it. I was with her the most part
of the time during the evening) & did not miss her
out of the ballroom except when she went
up stairs. I saw her go up, with Miss VanWinkle
& saw her come down again with her. I believe
Broudage went up after them. Mr. Seibel & one
little child went up stairs - the same stairs that
the girls went up. Mr. Seibel went up before they
did and came down after them. We went in a
wagon - there was no snow. I was in the bedroom
below, when Broudage & the Plaintiff were in
there. Then were some six in there when I went
in - Miss Sayer - Mr. Willis - Miss Gray - Broudage
Plaintiff & myself. I could not be positive
whether Miss Emory was in there at that time or
not. I saw her in there frequently during the
evening). This was perhaps between twelve & one
o'clock. That room was used as a dressing
room, & by sitting room for those who were
not dancing. I saw nothing improper there
that evening) - nothing but the best of behav-
-ior. It was a small bedroom. Persons would
sit on the bed. I think there was only one chair.
Several were lying on the bed - Miss Gray, the
Plaintiff - myself & Mr. Broudage were lying

across the bed. Mr Willis was sitting at the head, & Miss Sayer on a chair near the head of the bed. It was after we were in the bed room that Plaintiff & Miss Esther went up stairs.

On cross-examination by Defendants Counsel the witness further stated - Miss Gray was lying next the foot, I next - then the Plaintiff, & then Brundige. I didnt go up stairs that night.

Miss Nattie Sayer was next called, on the part of the Plaintiff, & testified as follows: I was at as many as two dancing parties at Robert Chery's last winter when the Plaintiff was there, & at some during the fall & winter when she was not there. I dont remember how many there were before Christmas, nor the time, precisely, when the Plaintiff was first there, but it was warm & rather muddy - the second time she was there it was sleighing. The first time she had on a dark Delaine with a black silk basque, a diamond shaped figure of red, black & light-color, in stripes. She wore a dark red rigolette, but no green bonnet that I saw. She did not change her dress that evening. I was in the bedroom that evening - Mr Subel, Brundige, Plaintiff & another lady that I dont remember were in there when I went in. I dont recollect who went out first - believe Plaintiff & Brundige were

there when I left & others also, but dont remember

there when I left & others also, but don't remember who they were. I did not see any improper conduct while I was in there. That room was used as a dressing room & sitting room. The rooms up stairs & one besides this down stairs were used for resting. I was sitting on a chair there at the head of the bed. Mr Seibel, Plaintiff, and Brundige & a lady whose name I don't remember were lying on the bed. I passed in and out frequently - did not see Plaintiff go up or come down stairs that evening. On cross examination by Defendant's Counsel this witness further stated. I did not hear any conversation between Brundige & Plaintiff in the room on that evening. These other persons were lying on the bed - Brundige, I believe, was next to the Plaintiff. I did not see Brundige & the Plaintiff come in together - don't remember whether they were lying so when I went in or when I left. This was the first ball that the plaintiff attended. There was then no snow on the ground - we went in wagons. I know Miss Emory - saw her in that room that night. I did not see her lying with Brundige at that time. This was along the latter part of the evening. I saw Brundige dancing don't know how many times. I saw the Plaintiff pretty much all the evening, except when she was up stairs. I was not up stairs at all

that night. The plaintiff came about dark. I believe - don't remember that there was a time about eight or nine o'clock, that I did not see her. I was in the room with her most of the time except when she was up stairs. The bedroom spoken of was the one used as dressing room - nearest the kitchen. I was not in the other one - but saw persons passing in & out of it. There was a light in the room where I was sitting. Some of those lying on the bed were covered up. Boundige & the Plaintiff were covered up - don't remember whether any of the others were or not - They were covered with a shawl I believe.

I attended another ball then that fall or winter, when there was snow on the ground we went in a sleigh. The Plaintiff - Boundige the two Phelps Boys - Mr Edgcomb - Mr Hunt - & others were there. I went out then with Lawrence Cherry, the two Phelps's & the plaintiff. I did not go back with them.

On Cross-examination by plaintiff's Counsel this witness further said: I did not return in the same sleigh, because I was asked to ride in another & chose to do so. No impropriety on the part of the plaintiff that I saw - prevented my returning with them: for I saw none.

The Plaintiff then called as a witness

Mrs. Frazer, who being duly sworn testified as follows: The Plaintiff wore to the first ball at Cherrys a dark delain skirt, with a diamond figure - no stripes - and a black silk basque a dark red rigolette on her head - To the second she wore a dark and p. flowered without any stripes, short sleeves, low neck & black waist - On her head she wore a green striped hood that I made for her. She took no change of dress with her to either of them.

On cross examination by defendants Counsel the witness further said: The plaintiff made her home with me, off & on, when she was without a place. She was not hired but helped me with my work. As far as I knew she was a steady girl - when she went out in the evening I generally went with her.

The next witness called by the Plaintiff was Frank Edgcomb who being sworn testified as follows: I attended a Ball last winter at Robert Cherrys with Brundige. There was snow on the ground - it was a little before Christmas. We went with a horse & sleigh. Job Hunt went along with us. No others in our company - We got there pretty near ten o'clock I should think may be later. They were dancing when we arrived. We went in & sat down by the fire Brundige danced but little - once or twice I guess he didn't sleep. He was around

then generally. He didnt go to dance. I dont know what time in the morning it was when we went home. I was with him in the bedroom below - dont remember whether ~~there~~ any girls were there or not. I was with him pretty much all the time he was there. Willis & Aunt were in there with us. Dont think Brundage was over five minutes away from me out of this room. He went out to the sleigh, unhitched the horse, covered her up & came back. He was not in any bedroom alone alone with a girl then that night - he was not up stairs then that night - We went home together - the same crowd.

On Cross-examination the witness further said: I was not keeping watch of Brundage particularly, that night. I came over from Genesee. Davis the Deputy Sheriff brought me. I have seen Mr. Brundage, since I came. He was lying on a bed, but whether asleep or not I cant say. Mr. Willis & I were on the bed ~~together~~ also. dont remember any girls on the bed with him. Of course I dont know where he was ^{he was} when, out of my sight. I could have seen, if he had gone out of the room up stairs. He was around together all the evening. I did not see any woman lying on the bed with him - couldnt say but that he might have laid there an hour - dont know whether he slept

but think he didn't much. I couldn't say whether he lay five minutes or an hour

This was all the testimony offered upon the trial of the above entitled cause, by the said plaintiff & the said plaintiff

The Counsel for the Plaintiff thereupon asked the Court to instruct the jury as follows:

1. The words - "You are a whore", spoken by a person, of a woman, are, by law, made actionable, & the law implies malice in speaking them, & an intention that they should be believed -
2. By the pleadings in the case the defendants admit the speaking of the words charged in the plaintiffs declaration, & the law entitles the Plaintiff to recover damages therefor in this action, unless the words so spoken, are proved to the satisfaction of the jury to be true.
3. In this case the jury will find a verdict for the plaintiff, unless they are satisfied from the evidence that the Plaintiff is a whore; and it is not incumbent on the plaintiff to prove the malice of the defendants, nor actual damage to the plaintiff - the law in such ^{case} presumes the existence of both malice & damage unless the words are true.

4. A witness may be impeached by his appearance on the stand, by inconsistencies & contradictions in his testimony, by the improbability & unreasonableness of his statements, by the interest he manifests in the case, and by his manner of testifying, as well as by contradictions by other witnesses or proof of general bad character.
5. If the jury are satisfied that a witness has in his testimony made any wilful misstatements, the jury may disregard his whole testimony.
6. It is for the jury to determine the credibility of witnesses, & in determining it, they may consider the relation of such witnesses to the parties or either of them - their conduct on the stand - the probability or improbability of their statements & their comparative means of knowledge of the facts of which they testify as well as contradictions by other witnesses; & in this case, if the jury believe that the statements of any of the witnesses are unworthy of credit - by reason of the unreasonableness and improbable character of such statements, or by the contradictions in their own testimony or in the testimony of other witnesses, the jury

have a right to disregard all such statements, notwithstanding the character of such witnesses may not have been proven by other witnesses to be bad.

7. In this action the jury may rightfully consider the pecuniary circumstances of the defendants in fixing the amount of Plaintiffs' damages, which damages the jury may find by way of punishment to ^{the} defendants as well as compensation to the Plaintiff.
8. If the Jury believe from the evidence that the defense in this case is false, & fabricated by a conspiracy to which the defendants ~~are~~ ^{is} a party or privy, or that the original slander has been since repeated, they may consider those circumstances or either of them in aggravation of the Plaintiffs' damages.
9. To the giving of which said several instructions so asked & every of them, the said defendants objected, but the court overruled said objections & gave the said several instructions so asked, to the jury, to which said decision, giving said several instructions & overruling the said objections thereto, the said defendants by their Counsel then & there excepted
And the said -

defendants thereupon asked the Court to instruct the jury on their part & behalf as follows:

1. Under the issue made by the parties in this case it is not necessary for the defendants to prove that the plaintiff was a common prostitute at the time of the speaking of the words charged in the plaintiff's declaration; but they are only required to show that she had been guilty of fornication prior to the time of ^{the} speaking of said words.
2. Fornication by an unmarried female person is the having illicit carnal intercourse with a male person, and one single act of the kind is sufficient to constitute fornication.
3. If the jury believe from the evidence, that the plaintiff had been guilty of fornication in a single instance, prior to the time of the speaking of the words as alleged in Plaintiff's declaration, then the jury should find for the Defendants.
4. If the defendants' plea of justification is not sustained by evidence to the satisfaction of the jury, that should not necessarily enhance the damages, if the jury believe from the evidence that the defendants interposed said plea with

the honest belief that they would be all

the honest belief that they would be able to sustain the same by evidence on the trial.

5. To sustain the defendants' plea of justification & make out a full & perfect defence to this action it is not necessary that they should ^{prove} by positive testimony that the Plaintiff had been guilty of fornication prior to the time of speaking the words as alleged in the plaintiff's declaration; but if the jury are satisfied by circumstantial evidence that such had been the case, then they should find for the depts.
6. If the jury believe from the evidence that the Plaintiff had, prior to the speaking of the words as charged in her declaration, frequently & at divers times been seen upon streets & unfrequented places, with different men, at late & unseasonable hours of the night or under the fence with a man on top of her, such circumstances or any of them constitute legal evidence in this case & tend to prove that the Plaintiff had been guilty of fornication.
7. Whereon a witness is contradicted by other credible witnesses upon material facts, ^{such} as his never lying upon a bed ~~in~~ ⁱⁿ a room ~~in~~ ⁱⁿ a bedroom with the Plaintiff - that he

~~That~~ was now relying either covered up or otherwise that he was sleeping an hour, or any other material facts, such contradiction tend to discredit his whole testimony.

But the Court gave only the said fourth instruction as asked, refused to give the said first - second - third & seventh instructions respectively as asked, modified the fifth instruction as asked by striking out the words - had been guilty of fornication therein contained & substituting therefor the words "was a whore", & also modified the said sixth instruction by striking out the word fornication therein contained as asked & substituting therefor the words "being a whore"

To which said ^{several} decisions of said Court, refusing & modifying said instruction as asked respectively in manner aforesaid, and to the said refusal & modification respectively, the said defendants by their Counsel then & there excepted.

And then upon, after the Court had disposed of said instructions, both on the part of the plaintiff & defendants as aforesaid, the Cause was submitted to the Jury who after consideration returned into Court their verdict in the words following, to wit: "We, the Jury, find the issue for the plaintiff

We, the Jury, find the issue for the plaintiff

and assess the damages at three thousand dollars"

And thereupon the said defendants by their Counsel, entered their several motions in arrest of judgment & for a new trial, in the words & figures following, respectively, to wit:

State of Illinois }
Henry County } } p. October Term A. D. 1839
of the Circuit Court of said County

Sophia Groze }
vs. }
Adrian Van Winkle } In Case -
Margery Van Winkle }

And the said defendants come and move the Court for an arrest of judgment in said Cause, for the reason that the declaration of said plaintiff in said Cause & each & every Count thereof are insufficient in law for the said plaintiff to maintain her said action against said defendants, by

Buckles & Carpenter and
Knox & Red Attys for Defts.

State of Illinois }
Henry County } October Term A. D. 1889 of the
Circuit Court of said County

Sophia Groze
vs.
Adrian Van Winkle
Margery Van Winkle

And the said defendants come & move the court for a new trial in said cause, for the following reasons, to wit:

- 1st The verdict of the Jury is manifestly against the evidence
- 2^d The verdict ^{of the Jury} is contrary to the law
- 3^d The Court erred in refusing instructions - No One (1), Two (2), Three (3), & Seven (7) asked by the defendants, & in altering No five & six, asked by the defendants
- 4th The Court erred in giving the instruction asked by the plaintiff
- 5th The Court erred in admitting improper evidence to the jury on the part of the plaintiff
- 6th The Court erred in rejecting evidence offered by the defendants
- 7th Improper evidence conduct on the part of the jury

8th. The Court erred in denying to the defendants
the right to begin or ^{to} open and close said
cause, & in giving that privilege to the plain-
-tiff

Buehler & Carpenter, &
Knox & Beed. Atty's for Defts.
Which several motions, in arrest of judgment
& for a new trial the Court overruled, to which
decision of said Court respectively overrul-
-ing said motions, the said defendants by
Counsel then & there excepted

And for as much as the said several mat-
ters aforesaid do not appear of record
in said Cause the said defendants then
& there prayed the Court to sign & seal
this their Bill of Exceptions, which is
accordingly done

{ Signed } J. Wilson Dury { Seal }
Judge

town of Cambridge within and for the County
of Henry and State of Illinois on the second
Monday (the eighth day) of October A D one
thousand eight hundred and sixty. (1860)

Present Hon John H Howard Judge

P. W. Smith Sheriff

Thos Wiley Jr Clerk.

Sophia George

vs

Adrian Vanwinkle and

Margary Vanwinkle his wife

Be it remembered that
heretofore and on the eleventh day of May A D
1860. (in the April Special Term said Court A D
1860) the said plaintiff Sophia George by her
attorneys caused to be filed in the Clerk's office of
said Court her motion in writing in the words
and figures following to-wit

"State of Illinois

Henry County

Of the April Special Term A D
1860 of the Circuit Court for said County

Sophia George

vs

Adrian Vanwinkle &

Margary Vanwinkle

her attorneys and enters
her motion to amend the record in the above
entitled cause as of the October Term A D 1859

William & Pleasants her attorneys, and the defend-
ants by Beckler & Carpenter their attorneys and the
plaintiffs said motion coming on to be heard
and it appearing satisfactorily to the Court
that the judgments rendered and entered in this
cause by this Court on the seventeenth day of
November 1859, in the October Term AD 1859 of
this Court, was by the Clerk of this Court
omitted to be formally entered of record in
said cause, and that due notice of the said
plaintiffs motion herein has been given to the
said defendants, It is by the Court ordered
and adjudged - by and with the consent of
the said parties by their said attorneys
here in Court made - that the record in
this cause made and entered on the seventeenth
day of November AD 1859, be and the same
is hereby corrected and amended by inserting
in said entry upon said record immediately
after the words "And the Court having heard
" the motions and being now fully advised
" in the premises orders that said motions be
" ~~they~~ they are hereby overruled" - the words
following viz. "It is thereupon considered
and adjudged by the Court that the said
plaintiff have and recover of and from
said defendants the said sum of Three
thousand Dollars, for her damages aforesaid,

and also her costs in this behalf expended,
and that she have execution therefor!"
- and so that the said inserted words shall
precede the following words in said record
viz. - "Wherupon said defendants pray an
"appeal from the judgment of this Court to
"the Supreme Court" &c (signed) J N Howard Judge

State of Illinois }
Henry County. }^{ss} I Amos Gould Clerk of the
Circuit Court in and for said County do hereby
certify that the foregoing pages contain a
true and perfect copy of the record and
files of said Court in the case of the motion
to correct and amend records, in Sophia Gutz
Plaintiff against Adrian Vauvrickle and Mary
Vauvrickle, as fully and completely as the same
remain of record and file in my said office
Witness my hand and seal of
said Court this thirteenth day
of March A D 1860

Amos Gould Clerk
By Ed Bond Deputy

William Van Hook

Stal 67. } appeal

Sophia Grose.

Amended record.

State of Illinois
County of Henry

J. Amos Gould Clerk of the Circuit
Court in and for said County in the State aforesaid
do hereby certify that the above and foregoing is a full
true and perfect copy of the Record and of all the proceedings
in said entitled cause as appears of Record in my
Office Messrs Amos Gould Clerk of said Court
and the seal thereof at Cambridge in said County
this 29th day of April A D 1861

Amos Gould Clerk
By E. S. Bond Deputy



And now comes the said Plaintiffs in Error and says that in the record and proceeding aforesaid and in the ^{meeting or} judgment aforesaid there is manifest Error in this to wit

- 1 The Court erred in refusing to the plaintiff the right to open & close the case under the issue made
- 2 The Court erred in receiving improper testimony offered by the plaintiff
- 3 The Court erred in refusing ^{to allow} competent proper evidence offered by defendant to be received
- 4 The Court erred in giving the first instruction asked by the plaintiff
- 5 The Court erred in giving each of the instructions asked by the Plaintiff severally
- 6 The Court erred in ~~giving~~ refusing to give each of the instructions asked by defendants, which were received

- 7 The Court erred in modifying defendants 5th instruction
- 8 The court erred in overruling the motion for a new trial
- 9 The Court erred in overruling the motion in arrest of judgment
- 10 The Court erred in rendering the judgment aforesaid in manner of form aforesaid

Glover Cook & Campbell
 Atty for & each
 Plaintiffs in Error

84 ~~100~~ 345

Sophia Grose

as
 Adrain Van Winkle
 Margery Van Winkle

Henry County Circuit
 Court

Copy of Record

Filed April 17, 1860
 L. Deland
 Clerk

Received May 1 1861
 L. Deland
 Clerk

Glover Cook & Campbell
 Atty for plaintiff in Error

William M. Pleasant
 Atty for defndt
 J. Kyle Dickey for Error

Supreme Court, No. 1000

William Grose - App. 10