No. 13340

Supreme Court of Illinois

Burnnett

---

vs.

Simpkins

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

JOHN BURNETT, Plaintiff in Error,
vs.
SARAH JANE SIMPKINS, by her next friend, DEAN SIMPKINS, Defendant in Error.
} *Error to Knox.*

BRIEF OF THE DEFENDANT IN ERROR.

1. The evidence in the case fully sustains the verdict of the jury and judgment of the Court.

Butler vs. *Eschleman*, 18 Ill. 44 to 46.
3 Gilm., *Greenup* vs. *Staker*, 202.
Tubbs vs. *Van Kleek*, 12 Ill. 446; 21 Ill. 316.

2. Defendant is not permitted to introduce evidence of acts of plaintiff on various occasions before and after her intimacy with defendant, tending to show that she was an unchaste woman, unless the same come to defendant's knowledge after his supposed promise, even in mitigation of damages.

Butler vs. *Eschleman*, 18 Ill. 44, 45, and 46.

3. The instructions asked for by defendant were not the law, and were properly refused.

Butler vs. *Eschleman*, 18 Ill. R. 44, 45, and 46.
Greenup vs. *Staker*, 3 Gilm. 202.

4. The evidence of seduction was proper evidence for the consideration of the jury, under all the facts of this case, as the consequence of the promise, in aggravation of damages.

Tubbs vs. *Van Kleek*, 12 Ill. pages 446 to 451.
Fidler vs. *McKinley*, 21 Ill. 308 to 316.

5. This Court will not disturb the verdict of a jury, or reverse a judgment on error, because of the admission of improper, or the rejection of proper testimony, or for want of proper directions or misdirections of the Judge who tried the cause, provided the Court can clearly see, by an inspection of the whole record, that justice has been done, and that the errors, if any, would not affect the merits of the cause.

Greenup vs. *Staker*, 3 Gilm. 216.

6. The damages in this case are not excessive, and the Court will not disturb the verdict or judgment unless it is apparent from the great disproportion between the offence and the finding that the jury acted under *prejudice*, *partiality*, *gross ignorance*, or *disregard* of *their duty*.

Fuller vs. *McKinley*, 21 Ill. 316.
3 Gilm. 216, *Greenup* vs. *Staker*.

TYLER & SANFORD,
Attorneys of Defendant in Error.

John Burnett
vs 166
Sarah J. Simpkins
&c

Deft's. m to Brief

Filed May 3. 1860
L. Leland
Clerk

14

John Barnet
vs
Sarah Jane Simpkins
by Edward Simpkins
her next friend

State of Illinois
In the Supreme
Court April
Term A.D. 1860

Error to Knox

It is agreed in this cause that it is to be entered on the Docket of the Supreme Court at next term, process against the defendants waived, & that defendants will enter their appearance & join in Error

March 3, 1860

Wm Mead for Pltff in Error
Tyler & Sanford attys for Deft in Error

166

John Burnett

vs

Sarah J Simpkins

In Supreme Court

Agreement

13340

Filed April 16. 1860

L. Leland

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

JOHN BURNETT, Plaintiff in Error,
vs.
SARAH JANE SIMPKINS, by her next friend DEAN SIMPKINS, Defendant in Error.
} *Error to Knox.*

BRIEF OF PLAINTIFF IN ERROR.

I. The evidence does not sustain the verdict. There is no evidence that there were mutual promises, or any promise at all. Without this the action cannot be maintained; mere admissions by the defendant, that he had "intended to marry the plaintiff," will not be deemed sufficient to charge the defendant in an action such as this, depending as it does upon the mutuality of promises. The plaintiff herself says that there was no mutual promises between herself and defendant.

Chitty on contracts, page 466
Parsons " " " 544
Feddler vs. *McKindley*, 21 Ill., 308.
Weaver vs. *Bachert*, 2 Penn. State R. 80.
Cole vs. *Cottingham*, 34 E. C. L. R., 297.

II. Evidence of the lewd and immoral character of the plaintiff is admissable in mitigation of damages; and it matters not whether such lewd and immoral conduct was before or subsequent to the time of making the promise. Although such conduct might not discharge the defendant if the promise were made by him knowing such conduct at the time, yet, it has seldom been questioned that such conduct might be given in evidence in mitigation of damages.

Johnson vs. *Caulkins*, 1 Johnson's Cases, 116.
Willard vs. *Stone*, 7 Cowen, 22.
McKee vs. *Nelson*, 4 Cowen, 356.

III. The instructions asked for by the defendant, and refused by the court, are clearly the law. There is no pretence here that there was any express promise made by the defendant. The jury were left to infer a promise, from the visits and conduct of the defendant; and the jury had clearly a right to consider from

the circumstances, whether the defendant visited the plaintiff for the purpose of marriage, or for some other purpose.

IV. The evidence of seduction should have been excluded from the jury. It was clearly inadmissable an aggravation of damages. The cases that have been decided admitting such evidence, do not rest upon any well established or correct principles of law. It is impossible to find, anywhere in the English authorities, cases sustaining such a view. The plaintiff has no right of action for her own seduction, and could claim no damages therefor; and if she could not recover directly, we are at a loss to know upon what principle she may recover indirectly.

Chitty on Contracts.
Berks vs. *Shaine*, 2 Bibb., 343.
Weaver vs. *Bachert*, 2 Penn. State R., 80.
Feddler vs. *McKindley*, 21 Ill's., 308.

H. M. & J. J. WEED.

166-98

John Burnett

vs Error to Kane

Sarah J. Simpkins

Brief of Plaintiff in Error

Filed May 8. 1860

L. Leonard

Clerk