

No. 12823

Supreme Court of Illinois

Deane.

vs.

Blackwell.

147

Amasa C. Deane

vs

Robert Blackwell

1857

149

~~1248~~

12822

1857

Deane
Blackwell

LaSalle County Court, March Term 1856

State of Illinois
LaSalle County

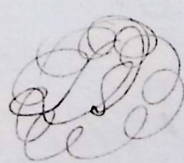
3p.
} Pleas Proceedings and find-

ments held and taken in and before the
LaSalle County Court in the State of Illinois
at the Court House in Ottumwa in the County
of LaSalle of March Term thereof to wit:
of the third day of March in the year of
our Lord one thousand eight hundred
and fifty six and of the Independence of
the United States of America the eightieth

Present Hon. Henry S. Carter Judge
Samuel Rogers Clerk
Horace Warner Sheriff

Verdiction to wit: on the 10th day of December
A.D. 1856 there was a process filed in the
office of the Clerk of the County Court of said
County, and a summons issued out
of said clerk's office in the words and
figures following to wit:

The People of the State of Illinois



to the Sheriff of our county of LaSalle
Serving

We command you that you
summon Amasa A. Dean if he shall
be found in your county personally to be.

and appear in our Lachlan County Court
before our Lords thereof on the first day
of the next term of said court to be held
at the Court House in Ottawa, on the first
Monday in March next. at ten o'clock
in the forenoon then and then to answer
unto Robert Blackwell in a plea of trespass
on Personal property. And have you then
then this writ and the answer in which
you shall have executed the same

In witness whereof we have caused the
seal of our said court to be hereunto affixed
and attested by Samuel W. Raymond, our
clerk thereof at Ottawa 10th day of December 1855

S. W. Raymond clerk

Enclosed and Back

"Executed this writ by making the same
to the within named Annas S. D. and
February 18th 1856

Sum. & Ret. do

H. Warner Sheriff

J. S. Harris Deputy

20 miles $\frac{1.00}{1.00}$

Filed Feb. 21-1856

S. W. Raymond clerk

Afterwards to wit on the 18th day of February
1856 a declaration was filed in the
office of the Clerk of said court. in the
words and figures following to wit.

State of Illinois (County Court thereof)
Laballe County, of the March Term A.D. 1856

Robert Blackwell

Amasa S. Dean

Dec. in Dispute

Robert Blackwell

plaintiff in this suit by Blackwell & Gray
his attorneys complains of the said Amasa
S. Dean in a plea of Dispute to personal property.

For that the said defendant on the first
day of December in the year of our Lord
Eighteen hundred and fifty five with force
and arms &c. at Laballe County aforesaid
shot off and discharged a certain gun
then and then loaded with gun powder
and shot at and against a certain colt
of the said plaintiff of great value to wit.
of the value of one hundred and fifty
dollar, and thereby and therewith then
and then so greatly shot, hurt and wound-
ed the said colt that by reason thereof the
said colt being of the value aforesaid
afterwards to wit on the day and year
aforesaid died to wit. at Laballe County
aforesaid and other wrongs to the plaintiff
then did to wit at the county aforesaid
against the peace and dignity of the

state of Illinois and to the damages of
the said plaintiff in the sum of two
hundred dollars and therefore he sues
by

Bushnell & Gray

his attys

Enclosed, "Filed Feb. 18-1856

Wm Raymond clrk
Clerk

Afterwards, to wit on the 3rd day of March
1856 the same being one of the days of said
term of said court the following order was
made and entered of record, to wit
Robert Blacknell

34

m,

Amasa S. Deane

Inspass

This day comes the
plaintiff by Bushnell & Gray his attorneys
and defendant by David P. Jones his
attorneys and enters his motion to quash
the writ issued herein - which motion
after hearing the arguments of counsel is
dismissed by the Court.

Afterwards to wit, on the 4th day of March
1856 a plea was filed in the office of the
clerk of said court in the word and
figures following to wit.

State of Illinois } County Court within and
LaSalle County } for said County. of the
March Term thereof Ad. 1856

Robert Blackwell

vs.

Amasa S. Jones

Ansvers

And the said defendant
by D. P. Jones his attorney comes and ^{defends} ~~answers~~
the wrong & injury whereof, and says
that he is not guilty of the said supposed
trespasses above laid to his charge, or any
or either of them, or any part thereof, in
manner and form as the said plaintiff
hath above thereof complained against
him And of this he the said defendant
puts himself upon the country &c.

D. P. Jones

And the plaintiff
doth & like

Defts. Attorney

Blackwell & Gray

Attys for plff.

Enclosed, filed March. 4. ~ 1856

WM Raymond Clerk

Clk

Affidavit to wit, on the same day an
affidavit was filed in the Clerk's office
in the words and figures following to wit

attendance of the said Briggs at present
term of this court could not have been
obtained on account of the sickness of
said Briggs father & that he cannot
safely proceed to trial without his evidence

Amasa S. Dean

Subscribed & sworn before
on March 4 - 1856

S. W. Raymond clerk

E. H. Smith Depy.

Endorsed, "filed March 4 - 1856"

S. W. Raymond clerk

Afterwards to wit on the 5th day of March
1856 the same being one of the days of said
term of said court. An order was made
and entered of record as follows to wit.
Robert Blackwell

34

m.

Amasa S. Dean

In pass

This day comes
the defendant by David P. Jones his attorney
and on his motion and affidavit of
defendant, it is ordered that this
cause be continued to the next term
of this court at defendants costs to
be taxed

8
Afternoon to wit on the 9th day of June
1856 the same being one of the days of the
June Term of said Court. the following
order was made and entered of record
to wit =

Robert Blackwell }
" " } Inispass
Amasa S. Dean }

This day comes the
plaintiff of Bushnell & Gray his attorneys
and defendant of Lewis his attorney
whereupon by agreement of parties
this cause is continued to the next term
of this court.

Afternoon to wit. on the 3rd day of September
1856 the same being one of the days of
the September Term of said Court. the
following order was made and entered
of record to wit.

6 Robert Blackwell }
" " } Inispass
Amasa S. Dean }

This day comes the
plaintiff of Bushnell & Gray his attorneys
and defendant by Lewis & Leonard his
attorneys - whereupon comes the following
issue of a jury to wit. Marcus Peister,
Daniel Mills, William R. Charles Wiley

David Coburn, Samuel Patten, William
Lukens, S. D. Lockwood, John E. Watman,
Isaac Thorne, Erwin Brown, & George
Arnall who now duly elected trial and
sworn to well and truly try the issues
herein according to the evidence, and
after hearing the evidence and arguments
of counsel the jury retire to consider of
their verdict - who after due delibera-
tion thereon have returned into court the
following verdict to wit. "We the Jury
find for the plaintiff in the sum of
Eighty dollars.

Whereupon the defendant by his said
attorneys enters his motion for a new
trial herein.

Afterwards to wit on the 4th day of September
1856 Affidavits were filed in the office of
the clerk of this court, which are in the
word and begin following to wit.

Robert Blackwell	}	County Court of said
"		County Sept. Term Ad.
Amasa S. Dean		1856

Amasa S. Dean the defen-

dant in the above case being duly sworn
deposes & says that the evidence of Eliakim
Ayres a witness introduced upon the
trial of this cause in all its material

part is entirely false & manufactured
 that the said witness was never present
 on any occasion when this deponent dis-
 charged a gun at the cult as stated by him
 that this deponent never told the witness
 that there was a cult down by the corner of
 the fence badly crippled - That at the time
 the cult of the plaintiff was shot, the witness
 Agins was not at the house of the defendant
 but was then living at David Johnsons at a
 distance of two miles from the house of
 deponent. Deponent further says that
 by reason of the evidence of said witness
 being entirely false he could not have
 been prepared to disprove it. said wit-
 ness has several times told this deponent
 that the plaintiff had him summoned
 as a witness but that he could not prove
 any thing of him - Deponent has discovered
 since the trial that he can prove of Allen
 Hodgson that on the Thursday said cult was
 killed said Agins was living at said
 Johnsons this fact can also be proved by
 this Amasa J. Sloan

Subscribed & Sworn before

on Sept. 4 - 1856

J. W. Raymond Cld

Attest: Sept.

Enclosed, filed Sept. 4 - 1856

J. W. Raymond Cld. Attest:

Allen Hodgson being duly sworn deposes
 & says that he heard at the time of the fact
 that the call of the plaintiff had been funnel
 shot, that he well recollects that this was
 on Friday - that on the day before he knows
 that Ayers was there & that he Ayers went
 to bed there that night. Defendant went
 to Johnson & through on Sunday of the week
 the call was shot. & remained there until
 Friday afternoon & during all the time
 defendant was there the witness Ayers
 & this defendant were boarding with said
 Johnson. Defendant says that he has no
 doubt that the statements of the witness
 Ayers that he was boarding at the house of
 defendant Deane on the day the plaintiff
 call was killed is true.

Allen Hodgson

Subscribed & sworn before me
 Sept. 4, 1856

S. W. Raymond clerk

Essex Co. S. C.

Enclosed, "filed" Sept. 4-1856

S. W. Raymond clerk

Essex Co.

Affirmations to wit, on the 6 day of Septem-
 ber 1856, the same being one of the days
 of the September term of said Court, the

following order was made and entered
of record to wit.

Robert Blacknell

6

n.

Amasa S. Dean

Inspass

This day comes the
parties herein by their said attorneys
whereupon after hearing the arguments
of counsel upon the motion entered herein
for a new trial the said motion is
overruled by the Court - to which ruling of
the Court the defendant then and there
excepted

It is therefore considered by the Court
that the said plaintiff have and recover
of said defendant the said sum of
Eighty dollars for his damages and also
his costs and charges of his herein expen-
ded and that he have execution therefor

Afterwards to wit on the 12th day of Septem-
ber 1856 the same being one of the days of
said September term of said Court. the
following order was made and entered
of record to wit.

Robert Blacknell

6

n.

Amasa S. Dean

Inspass

This day comes
the defendant of Seland

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Lorus his attorneys and proxy an appeal
herin which is granted on his filing
an appeal bond to be approved of the
Court whereupon the said defendant
produced and filed an appeal bond with
Leimus Spencer as security which bond
is approved of the Court

On the same day an Appeal bond was filed
with the clerk of said Court in the words and
figures following to wit.

Know all men of these presents, that
we Amasa S. Dean and Leimus Spencer of the
County of Latah in the state of Illinois are
held & firmly bound unto Robert Blackwell
of said County in the penal sum of One
hundred and fifty dollars, for the payment
of which well and truly to be made in kind
and value, our heirs, executors & administrators
jointly, severally, & firmly of these presents
Witness our hands & seals in said County
this twelfth day of September A.D. 1856

The condition of the above obligation is
such that whereas the said Robert
Blackwell died on the third day of Septem-
ber A.D. 1856 in the County Court in & for said
County upon a judgment against
said Amasa S. Dean for the sum of Eighty
dollar damages, and also costs of suit

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in a certain action of trespass then pending
in said Court wherein said Blackwell
was plaintiff & said Dean was defendant
from which judgment said Dean has
prayed for & obtained an appeal to the
Supreme Court of said State -

Now if said Dean shall duly prosecute
his said appeal with effect & shall moreover
pay the amount of the judgment, costs, interest
& damages involved & to be involved
against him in case said judgment
shall be affirmed in said Supreme Court
then the above obligation to be void
otherwise to remain in full force & effect

Amasa S. Dean

James Spencer

lllll
lllll
lllll
lllll
lllll
lllll

Enclosed, "filed Sept. 12-1856

Wm. Raymond Clerk

Uccinto

Afterwards, to wit, on the 13th day of September
1856 the same being one of the days of the
said September Term of said Court, a bill
of exceptions was filed with the clerk, of said
Court in the words and to the following effect.

State of Illinois }

LaSalle County. } J. C. Court Clerk of said
County.

September Term 1856

Robert Blackwell 3

Amasa S. Dean }

Be it remembered that
on the trial of this cause the plaintiff to
maintain the issue on his part, introduced
evidence tending to prove that the cult of
the plaintiff was in the habit of getting
into the field of the defendant & that the
crowd of cults in which the cult of the plain-
tiff was running had been driven out of
the field, & tending to show that the defen-
dant shortly after the cult had been driven
out shot him on the prairie about forty
rods from his field & in LaSalle County.
A witness named Agon sworn that on
one occasion defendant sent him to the
house to get a gun, that he got it, & that
the defendant went out on the prairie
where there was a crowd of cults, among
which was plaintiff's cult & discharged
the gun at them that it was loaded
with shot & powder, & that next day
or a day or two after the defendant came
to the house & said to witness, that there
was a cult crowd of the corner of the fence
badly crippled. He also stated that at
this time he was sick boarding with and
making part of the time for the defendant

and frequently went to the neighbors and sometimes stayed all night & that he so boarded & worked with him before & after this time about a fortnight & that it was during this fortnight that the gun was so discharged. There was evidence that the calf was found next day shot & that it died on the next day, that the time of the shooting was on Thursday.

To one of the witnesses introduced on the part of plaintiff the defendant & his attorney propounded the following question, "Was not the calf of the plaintiff which was killed in the habit of breaking into other fields in the neighborhood of the plaintiff's field." To this question & to the witness answering it the plaintiff & his attorney objected. The counsel for the defendant stated that the object of offering the testimony was to show that some other person than the defendant killed the calf. It was stated by the court that if the defendant had other & further testimony to offer to show that some other person killed the calf, that the evidence offered would be proper. Defts. counsel said that he had no further evidence to offer on that subject. The court sustained the objection & the witness was not permitted to answer it. And to the opinion of the

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Court in including the evidence the defen-
dant then & there excepted

The evidence under the ruling of the Court
as to the evidence & under the instructions
given in the case was sufficient to war-
rant the verdict.

The Court at the request of the plaintiff
gave the following instructions
1st If the Jury believe from the evidence, that
the defendant shot the cat in controversy
and that the cat died from injuries pro-
duced by such shooting, if proved, and that
the cat belonged to the plaintiff, then the
plaintiff is entitled to recover, and the
measure of damages in such case is
the actual value of the cat at the time of
such injury

2nd If the Jury believe from the evidence that
the defendant shot the cat of the plaintiff
either wilfully and maliciously, or through
gross negligence, then in assessing the
plaintiff's damages, the Jury are not
confined to the actual value of the cat at
the time of such injury, but the Jury are at
liberty to assess in addition thereto, such
punitive, vindictive or exemplary damages
as the Jury may deem right and proper
under all the facts and circumstances of
the case in evidence

3rd If the Jury believe that the defendant
 recklessly and maliciously shot the plaintiff
 call then the Jury are at liberty to find the
 plaintiff such a verdict as shall com-
 pensate the plaintiff for the damages, which
 the evidence shows the plaintiff has sustained

To the giving said instructions & each
 of them, the defendant objected. The Court
 overruled the objections & to the opinion
 of the Court in overruling the objections &
 giving said instructions & each of them
 the defendant then & there excepted.

The defendant requested the court to in-
 struct the jury as follows.

1st Will the Court instruct the Jury that if
 they believe from the evidence that the wit-
 ness Ayers has knowingly sworn to one
 material material to the issue then his
 evidence is not to be relied upon in
 relation to all other matters known to them.

2nd Will the Court instruct the Jury that they
 are not at liberty in assessing damages
 in the case to allow anything for attorney
 fees or for expenses in conducting his suit

The court refused to give the first instruction
 of the defendant in the terms asked, &
 qualified it & by adding the brackets so

Given in general

that it read as follows.
we will the Court instruct the Jury that if
they believe from the evidence that the
witness Ayers has knowingly sworn to an
untruth material to the issue herein, all
other matters sworn to by him may be disre-
garded of the jury. # (his evidence is not to be
relied upon in relation to all other matters
sworn to by him.)

Qualification # all other matters sworn to by
him may be disregarded of the Jury
and leave out all the above in brackets

To the refusal of the court to instruct the
jury as requested & in qualifying the in-
struction the plaintiff then & there objected

The objection was overruled & to the opinion
of the Court in overruling the objection & in
refusing to give the instructions asked & in
qualifying it as above, the defendant then
& there excepted - The defendant moved
for a new trial & in support of the motion
made the following affidavits -

(See Affidavits of Deard & Woodson inserted above)
The court overruled the motion for a new trial
& to the opinion of the Court in overruling the
motion the defendant then & there excepted &
prays the Court to sign & seal this his bill of
exceptions which is done
indorsed - filed Sept. 13 1856
W. B. Cuthbert
J. W. Rogers

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State of Illinois
Sabath County

J. Samuel W. Raymond
Clerk of the County Court of said County.
hereby certify that the foregoing is a
full true and complete copy of the
record in the case wherein Robert Blackwell
is plaintiff and Amasa S. Deard de-
fendant, as appears from the records
and files in my office.

And witness whereof I have
hereunto set my hand & affixed
the Seal of said Court at Alton
the 22 day of April A.D. 1857
Samuel W. Raymond Clerk
Edmund Lapp

Supreme Court of the State of
Illinois April Term. A.D. 1857

Amasa S. Dean Applt.

Robt. Blackwell Applt.

} Appeal from
La Salle County
Court

And now comes the said Appellant
Amasa S. Dean and says that in
the record, proceedings & judgment
a gross & manifest error hath
intervened to his injury in this
viz

1st The Court erred in refusing to
allow the plaintiffs' motion to
answer the question "was not
the colt of the plaintiff which was
killed in the habit of breaking
into other fields in the neighborhood
of the plaintiffs' field" & in
sustaining the plaintiffs' objection
to said question

2nd The Court erred in giving the
plaintiffs instructions to the
jury

3rd The Court erred in refusing
to give the defendants instructions
to the jury.

4th The Court Erred in refusing to give the defendants second instruction to the jury as asked by the defendant

5th The Court Erred in qualifying the defendants 2nd instruction & giving the same thus qualified to the jury

6th The Court Erred in overruling the motion for a new trial

Wherefore the said defendant prays that said judgement may be reversed set aside & for nought intended

By Seland & Jones
Attys for App't

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Anna S. Deane

187

Robert Blue Knell

²
Filed April 24 1887
S. Leland
Clerk

Clerks fees for record
said of ~~1887~~, April 24 1887 \$6.00

STATE OF ILLINOIS, SUPREME COURT,

APRIL TERM, A. D. 1857.

AMASA S. DEAN, App't, vs. ROBERT BLACKWELL, App'le.

Appeal from La Salle County Court.

ABSTRACT OF THE RECORD.

RECORD.

Page 3.

Page 5.

Pages 8, 9.

APPELLANT filed his declaration in trespass, for shooting a colt, February 18th, 1856. Defendant filed the general issue March 4th, 1856.— Trial by jury at September term, 1856, of La Salle County Court.

Evidence.

Page 15.

On the trial below, the plaintiff introduced evidence to the jury, tending to prove that plaintiff's colt was in the habit of getting into the field of the defendant; tending to prove that the drove of colts in which the plaintiff's colt was running had been driven out of the field; and tending to prove, that a short time afterwards the defendant shot plaintiff's colt on the prairie, about forty rods from the field, and in La Salle County.

Pages 15, 16.

A witness named Ayres swore, that on one occasion defendant sent him to the house to get a gun; that he got it, and that the defendant went out on the prairie, where there was a drove of colts, among which was plaintiff's colt, and discharged the gun at them; that it was loaded with shot and powder, and that on the next day, or a day or two afterwards, the defendant came to the house and said to witness that there was a colt down by the corner of the fence, badly crippled. He also stated that, at this time he was sick, boarding with and working part of the time for defendant, and frequently went to the neighbors' and sometimes stayed all night; and that he so boarded and worked with him before and after this time about a fortnight, and that it was during this fortnight that the gun was discharged.

Page 16.

To one of the witnesses introduced on the part of the plaintiff, the defendant, by his attorney, propounded the following question: "Was not the colt of the plaintiff, which was killed, in the habit of breaking into other fields in the neighborhood of the plaintiff's field?"

To this question and to the witness answering it, the plaintiff, by his attorney, objected. The counsel for the defendant stated, that the object of offering the testimony, was to show that some other person than the defendant killed the colt. It was stated by the court, that if the defendant had other and further testimony to offer, to show that some other person killed the colt, that the evidence offered would be proper. Defendant's counsel said, that he had no further evidence to offer on that subject. The court sustained the objection, and the witness was not permitted to answer it; and to the opinion of the court, excluding the evidence, the defendant then and there excepted.

Page 17.

Plaintiff's Instructions.

The court instructed the jury, on behalf of the plaintiff, as follows:

2nd. "If the jury believe, from the evidence, that the defendant shot the colt of the plaintiff, either wilfully and maliciously, or through gross negligence, then in assessing the plaintiff's damages, the jury are not confined to the actual value of the colt at the time of such injury, but the jury are at liberty to assess, in addition thereto, such punitive, vindic-

RECORD.

Page 17.

Page 18.

tive, or exemplary damages, as the jury may deem right and proper under all the facts and circumstances of the case, in evidence.

3d. "If the jury believe that the defendant recklessly and maliciously shot the plaintiff's colt, then the jury are at liberty to find the plaintiff such a verdict as shall compensate the plaintiff for the damages which the evidence shows the plaintiff has sustained."

To the giving of said instructions, and each of them, the defendant, by his counsel, objected, which objection was overruled by the court, and the defendant, by his counsel, then and there excepted to the opinion of the court in overruling said objection, and giving said instructions.

Defendants Instructions.

Pages 15, 18. The defendant requested the court to instruct the jury as follows:

1st. "Will the court instruct the jury, that if they believe, from the evidence, that the witness Ayres has knowingly sworn to an untruth material to the issue, then his evidence is not to be relied upon in relation to all other matters sworn to by him."

Page 19. The court refused to give the instruction asked for by defendant in the terms asked, but qualified it so as to read as follows:

1st. "Will the court instruct the jury, that if they believe, from the evidence, that the witness Ayres has knowingly sworn to an untruth material to the issue herein, all other matters sworn to by him may be disregarded by the jury."

To the refusal of the court to instruct the jury as requested, and to the qualifying of the instruction of the defendant, the defendant then and there objected. The objection was overruled, and defendant excepted.

The jury rendered a verdict for the plaintiff, and defendant moved for a new trial, which motion was overruled by the court, and defendant excepted. Judgment for plaintiff.

Errors Assigned.

1st. The court erred in refusing to allow the plaintiff's witness to answer the question, "was not the colt of the plaintiff, which was in the habit of breaking into other fields in the neighborhood of the plaintiff's field," and in sustaining the plaintiff's objection to said question. *Kilmer*

2nd. In giving plaintiff's instructions.

3d. In refusing defendant's instructions.

4th. In refusing to give defendant's 2nd instruction in the terms asked.

5th. In qualifying defendant's 2nd instruction.

6th. In overruling the motion for a new trial.

E. S. LELAND & D. P. JONES,

Attorneys for Appellant.

*And now comes the said Robert Blackwell
defendant in error, and puts in his
finder in error, and says that there is
no error in the records and proceedings
aforesaid.*

Bushnell & Co. v. Ayres.

Ally: pro depts. in error.

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Dear
 W
 Blackwell

Filed April 28, 1857

Lo Zealand

Founders in Error
 Filed May 2, 1857

L. Seligman
 Clerk

157 NEW YORK & D. H. 10212

Wm. L. Seligman