

8855

No. _____

Supreme Court of Illinois

Sophia & John Peltier

vs.

Mary Mit^c~~te~~, by next friend,

State of Illinois
Marion County ^{SS} Pleas and Proceed-
ings had in the
Circuit Court in
and for the County of
Marion and State of
Illinois before the Hon
Silas L. Bryan in a
certain cause heretofore
pending in said Court
between Mary Mite by
her next friend John
Mite Plaintiff and So-
phie Peltier and John
Peltier Defendants.

Be it Remembered that on the 27th
day of July A.D. 1868, the above named
Plaintiff filed in the office of the
Clerk of said Court her Affidavit
and Preceipe for Capias ad respon-
dendum, against the above named
Defendants, which are in words
and figures following to-wit:

State of Illinois
Marion County ^{SS} In the Circuit Court
John Mite who is
about to commence a suit as
next friend of Mary Mite a

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minor, against Sophia Peltier
and John Peltier her husband in
a plea of Trespass on the case for
Slander - being duly sworn on oath
states that on or about the 30th
day of June 1868 at and in the
said County of Marion - he said
Sophia Peltier wife of the said
John Peltier - maliciously, wilful-
ly and falsely and Slanderosly
said and stated of and concern-
ing the said Mary Mite who is
a single unmarried woman,
that she the said Mary Mite
had the night before been guilty
of sexual & criminal intercourse
with one Nicholas Fritzhou,
And further this said Sophia
Peltier on or about the said 30th
day of June 1868, at the said County
of Marion - falsely, maliciously and
slanderosly said & charged in
the presence & hearing of Mrs
Ellen Philipson and others then
& there being, that Mary Mite
did the night before let one
"Fritz" meaning Nicholas Fritz-
hou "fuck" her meaning to have

sexual intercourse, and that
 then and there she said Sophia
 Peltier further said in hearing
 of the party aforesaid thus
 "She (meaning Mary Mite) fucked
 as well or as good as the old
 one" hereby meaning and charg-
 ing said Mary Mite with crim-
 inal & sexual intercourse with said
 Nicholas Fitzhoun. By the acts
 of defts above named plaintiff claims
 to have sustained damage to
 the amount of \$5000—. Affiant
 states that he believes whatever
 judgment may be obtained in
 said suit will be in danger
 of being lost unless the said
 Sophia Peltier & John Peltier defts
 herein be held to bail. Affiant
 further prays for a hapias ad
respondendum in pursuance
 of the Statute in such case
 made & provided
 sworn to & subscribed John Mite
 before me this 22nd
 July 1868
 Henry Kurth
 J. P.

4 State of Illinois } In Circuit Court
Marion County } To August Term 1868
Mary Mite a minor }
who sues by her next } On a plea
friend John Mite } of Trespass
vs } on the case
Sophia Petier and her } for Slander
husband John Petier } Damages \$5000.

The Clerk of said Court will
issue capias ad respondendum
in this action returnable as
above, to be directed to the
Sheriff of Marion County to
execute

Leary & Dwight
Attys for Pltff

To H. C. Moore }
Clerk Circuit Court }

Whereupon capias ad respondendum
was issued which is in words
and figures following to wit:
State of Illinois }
Marion County }

The People of the
State of Illinois to the Sheriff
of Marion County. Greeting:

We command you to take Sophia Peltier and her husband John Peltier and them safely keep so that you have their bodies before the Circuit Court of Marion County in the State of Illinois at the next Term thereof to be holden at the Court House in Salem on the third Monday in the Month of August next to answer Mary Mite a minor who sues by her next friend John Mite in a plea of Trespass on the case to her damage 5000. as she says and have you then and there this writ



Witness Henry C. Moore
Clerk of our said Court
and the official Seal
thereof at Salem this 24th
day of July A.D. 1868
H. C. Moore
Clerk

which was indorsed by the Clerk
as follows.
Ordered that the Sheriff take
bail from defendants in the

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sum of \$1000⁰⁰ each

H. C. Moore CLK

and was indorsed by the Sheriff as follows

"Executed the within writ by Arresting the within named Defendants and by taking their Bond as is by Law in such cases required July 28th 1868,

D. D. Leah Sheriff"

And afterwards to-wit on the 3rd day of August 1868, the said Sheriff filed the Bail Bond of the said Defendants which is in words and figures following to-wit:

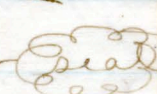
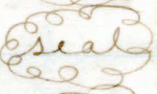

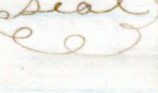
Know all men by these presents that we Sophia Peltier and John Peltier are held and firmly bound unto D. D. Leah, Sheriff of Marion County Illinois and his successors in office in the penal sum of Four thousand dollars good and lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally. Witness our

hands and seals this 28th day of
July A.D. 1868,

The conditions of this obligation is
such. That whereas Mary Mite - a
minor who sues by her next friend
John Mite. has lately sued out
of the Circuit Court of the County
of Marion a certain writ of
Capias ad respondendum in a
certain plea of trespass on the
case, against Sophia Peltier
and John Peltier, returnable to
the next term of the said Court
to be holden at the Court House
in Salem, Marion County, Illinois,
on the seventeenth day of August
next =

Now if the said Sophia Peltier
and John Peltier shall be and
appear at the said Court to be
holden at said Salem, on the
said seventeenth day of August next
and in case the said
shall not be received as
bail in the said action, shall
put in good and sufficient
bail, which shall be received
by the plaintiff or shall be

adjudged sufficient by the Court
 on the said
 being accepted as bail, shall pay
 and satisfy the costs and con-
 demnation money, which may
 be rendered against the said
 Sophia Peltier and John Peltier
 in the plea aforesaid, or surren-
 der the bodies of the said Sophia
 Peltier and John Peltier in exec-
 ution, in case the said Sophia
 Peltier and John Peltier shall
 not pay, and satisfy the said
 costs and condemnation money
 or surrender himself in execution,
 when by law, such surrender is
 required, then this obligation to
 be void - otherwise to remain
 in full force and effect =

Sophia Peltier 
 Jean Peltier 
 A. G. Schmidt 
 John Betz 

And afterwards to-wit on the 3rd
 day of August 1858 said Plaintiff
 filed in said Court his Decla-
 ration herein which is in words

and figures following to-wit:
 State of Illinois } In the Marion Circuit Court
 Marion County } To the August Term A.D. 1868,

In this action Mary Mite a minor who sues by John Mite her next friend the plaintiff by Casey & Dwight her attorneys complains of Sophia Peltier and her husband John Peltier defendants in a plea of Trespass on the case.

For that whereas the plaintiff now is a virgin and chaste woman and from the time of her nativity hath been so and hath been accounted, esteemed and reputed as such among her neighbors, as well as of good reputation and fame by all other people, and hath all her lifetime continued untouched and unsuspected of the atrocious crime of adultery or fornication, or any such enormous crimes Nevertheless the said defendant Sophia Peltier, who is the wife of the said John Peltier well knowing the premises, but continues

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ing maliciously and wickedly
to injure and defame the plain-
tiff in her good name and rep-
utation and to bring her to dis-
grace and infamy, and to sub-
ject her to the penalties and pun-
ishment provided by law in such
cases, to wit on the 30th day of
June AD 1868 at the County of
Marion and State of Illinois in
the presence and hearing of divers
good people of this State in a cer-
tain discourse which the said
Sophia Peltier then and there had
of and concerning the plaintiff,
did falsely and maliciously
speak and publish of and concern-
ing the plaintiff and of and con-
cerning a charge of fornication,
and thereby intending to charge
the plaintiff with having been
guilty of said crime of fornication,
and then and there intended, that
said citizens, who then and there
heard said charge should so
understand the said Sophia
Peltier, Defendant, and who then
and there did so understand

the said defendant, the false, scandalous, malicious and defamatory words following, that is to say -

"Mrs Philipson. I'll tell you I saw Fritz" (meaning Nicholas Fritz-house) "fuck Mary" (meaning Mary Mite plaintiff) "last night between nine and ten o'clock" = "you" (meaning Mary Mite plaintiff) "are a whore" - "you" (meaning Mary Mite plaintiff) "and your mother keep a whore-house" - "She" (meaning Mary Mite plaintiff) "fucked as well as the old one" (meaning plaintiffs mother) - "She" (meaning plaintiff) "done it as well as the old one" (meaning the mother of plaintiff) "Her" (meaning the plaintiff) and her mother keep a whore house" - meaning thereby that and there to charge that the plaintiff, being and always having been an unmarried woman, had been and ~~and~~ was guilty of the crime of fornication by means of which false, scandalous and malicious words so spoken and published, the

plaintiff hath fallen into disgrace, contempt and infamy with many persons with whom previously she was in great esteem. And afterwards to wit on the day and year last aforesaid at the county aforesaid in a certain other discourse which the said defendant Sophia Peltier wife of the said John Peltier then and there had of and concerning the said plaintiff and of and concerning the said charge of fornication in the presence and hearing of divers other good and worthy citizens of the said State the said defendant Sophia Peltier further contriving and intending as aforesaid then and there in the presence and hearing of the said last mentioned citizens, falsely and maliciously spoke and published of and concerning the said plaintiff and of and concerning the said charge of fornication the false scandalous

malicious and defamatory words following—that is to say:—
 "She (meaning plaintiff)" "had sexual intercourse with Fritz" (meaning Nicholas Fritz house) "last night between nine and ten o'clock"— "Mrs Philipson I will tell you, I saw Fritz" (meaning Nicholas Fritz house) "fuck Mary" (meaning plaintiff) "between nine and ten o'clock last night" "I went up to them till I could have put my hand on them when Mary said, "Oh Auntie don't tell my mother—" "You" (meaning Mrs Mary Mite) "and your daughter (meaning plaintiff) "are both whores"— "You" (meaning Mrs Mary Mite and plaintiff) "know you keep a whore house"— "She" (meaning plaintiff) "does it like the old one" (meaning Mrs Mary Mite the mother of plaintiff) "She" (meaning plaintiff) "does it as well as the old one" (meaning plaintiff mother) "She" (meaning plaintiff) "fucks like the old one" (meaning plaintiff's mother) = meaning

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thereby then and there to charge
that the plaintiff being and al-
ways having been an unmar-
ried woman, had been and
was guilty of the crime of for-
nication - by means of which
false, scandalous, and ma-
licious words so spoken and
published, the plaintiff hath
fallen into disgrace, contempt,
and infamy with many persons
with whom previously, she
was in great esteem. To the
damage of plaintiff of Five
thousand dollars, wherefore
she brings suit &c -

By Casey & D Wright
her attorneys

And afterwards to wit on the 18th
day of August 1868, comes the de-
fendants by their attorney W.
Stoker and files their Plea here-
in which is in words and fig-
ures following to wit:

State of Illinois } Of the August Term 1868
Marion County } Of the Marion Circuit Court

Sophia Peltier &
John Peltier

ats

Mary Mite who sues
by John Mite next friend

Blander

And the said
defts by W. Staker their atty
comes and defends the wrong
& injury when ~~sc~~ and says
that they are not guilty of the
said supposed grievances above
in the said Plffs declaration
laid to their charge or any or
either of them or any part here-
of in manner & form as the
said Plff. hath above thereof
complained against them.
And of this they the said defts
put themselves upon the Country
&c

W. Staker atty
And the Plaintiff } for defts
doth the like }
By Casey & Dwight }
His attys }

Whereupon appears the following
order of Court which is in

words and figures following to-wit:
 Mary Mite by her
 next friend John Mite

vs
 Sophia Pettier
 John Pettier

Trespass
 Thursday
 August 20th 1858

come the parties
 by their attorneys and on motion
 of Plaintiff It is ordered that
 attachment issue for E. B. Marshall
 a witness for Plaintiff herein

Friday August 28th 1858
 come again the parties by their
 counsel and issue being joined
 Let a jury come, and thereupon
 come the following Jury To-wit:
 David Shanafelt, Hubbard, V.
 Jones, C. H. Watson, Jacob. Bruba-
 ker, Isaac. Brubaker, James Mc
 Kauey, W. F. Lynch, J. F. Black
 Martin Allmon, J. J. Idemon,
 Jacob. Stonecypher and Samuel E.
 Stevenson twelve good and law-
 ful men who being tried, elec-
 ted and sworn well and truly
 to try the issues joined herein,
 having now heard evidence, ar-
 guments of counsel and instructions

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of the Court retire to consider of the Verdict and afterwards bring into Court the following Verdict to-wit "We the Jury find for the Plaintiff and assess the damages at five hundred dollars" Whereupon Defendants enter their motion for new trial and the same is refused by the Court and judgment is entered upon the Verdict. It is therefore Ordered and adjudged by the Court that said Plaintiff do recover of and from said Defendants said sum of \$500 together with the costs herein & that execution issue. Defendants now pray an appeal to the Supreme Court which is granted by the Court upon Defendants filing Bond in 30 days in \$800 to be approved by the Clerk of this Court.

And afterwards to-wit on the 28th day of August 1868 comes the Defendants by their said Attorneys and file their Motion for new trial which is in words

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and figures following to wit;
State of Illinois }
Marion County }

Mary Mite &c }
vs
Sophia Peller }
et al }

And now comes
the defts & moves the court
to grant him a new trial
in ^{this} cause. Because,
The Verdict is against the
law and against the evidence
2 and because the court ad-
3- mitted improper evidence to go
to the jury
4 Because the court excluded
proper evidence from the jury
5- Because the court gave im-
proper instructions to the jury
for the plf
6 And because said proceeding
was otherwise illegal &c
Staker & O'Melveny

And afterwards to wit on the 5th day
of September 1868 comes the Defendants

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by their said Attorneys and files their Bill of Exceptions herein which is in words and figures following to-wit:

Mary Wite a minor who
sues by her next friend
John Wite
vs
Sophia Peltier and her
husband John Peltier

Trespass
on the case

Be it remem-
bered that on Friday the 28th day
of August 1868 and being the 11th day
of the August Term of the Marion
Circuit Court 1868, the above styl-
ed cause came on to be heard
before the Court and a Jury,
Whereupon the Plaintiff introduced
Mrs Philipson as a witness who
testified that she was acquainted
with the parties, that several weeks
ago, she is not certain as to
the time. Mrs Sophia Peltier, left
and wife of John Peltier had a
conversation with witness at the
house of Defts. where Plaintiff
also resided, the conversation
was in the yard, and witness,

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Mrs. Mary Mite, mother of Plaintiff, Miss Snitzer and Deft Sophia Peltier were present. That Deft Sophia Peltier took hold of Witness hand and said to witness "Mrs Philipson I'll tell you I saw Fritz fuck Mary last night between 9 and 10 O'clock behind the kitchen." Her mother and her keep a whore house, she does it like the old one, "you and your daughter are both whores" "you and your daughter keep a whore house". Witness stated that these words were repeated over by Deft Sophia several times, that she knew the man Deft called "Fritz" but did not then recollect his full name but pointed him out in the crowd present. That by the name "Mary" and the words "her" and "daughter" in the above words spoken by Deft witness understood them to refer to and mean Mary Mite plaintiff. Witness further stated that Defts were persons of property, resided in a brick house in

Australia, and were of good standing & influence in society. Plaintiff then asked witness the pecuniary circumstance and position of plaintiff Mary Mite & her Father who brings this suit as her next friend - Defts objected to the question, the Court overrules the objection, to the ruling of the Court the Defts by their attorneys then and there excepted answer they are both poor. Plaintiff then asked this question, What does her Father & next friend follow for a living - objected to by Defts attys, Court overruled the objection and Defts by their attorneys then and there excepted to the ruling of the court, witness answer he worked in the blacksmith shop, witness further stated that plaintiff had no property, Witness stated that the conversation above spoken of lasted some time, that during the said conversation the man Fritz passed along. On cross examination witness stated that all

the words above described as being spoken by Deft. Sophia Peltier was spoken in the English language that witness heard no words spoken by Deft in the German language, that witness does not understand the German language - That Miss Smutzer spoke both English & German That witness did not ask Miss Smutzer to explain to her what Deft Sophia stated in German in the above conversation, or or what any such words meant, Plaintiff next introduced Mrs Mary Mite mother of Plaintiff who testified, she heard the conversation spoken of by Mrs Philipson and corroborated the words detailed by Mrs. Philipson as having been spoken by Deft Sophia Peltier, states that Plaintiff was thirteen (13) years old last February, that the man Deft Sophia Peltier called "Fritz" is named and known as Nicholas Fritzhouse, Plaintiff then introduced Nicholas

23 Fritzhouse - who stated he was passing sometime after dark, where the conversation above spoken of was being carried on and heard Deft Mrs Peltier say "that's the fellow that fucked Mary last night". heard no more do not understand English language much. my name is Nicholas ^{Esposito}

Plaintiff he introduced Peter Werherheim who testified that he was acquainted with Defts. that they were husband & wife. that Deft Sophia was a widow before and at the time she married John Peltier her present husband and owned separate property before she married him & that said Deft John Peltier owned considerable property & several houses, and that Defts resided in a brick house, That witness resided across the street from Defts - That on the evening of the conversation above spoken of he was at home, that he heard loud talking &

24 voices at Defts from 8 o'clock
until 10 o'clock P M. did not try
to hear what was said,
Plaintiff here closed her testimony
Defts then introduced Miss Smit-
zer who testified that she was
present at said conversation tes-
tified to by the other witnesses,
and that a part of said conver-
sation was in English and a
part in German. That the only
words spoken in English by
Deft that she heard was as
Fritz passed along she heard
Deft Sophia say, "here goes that
man that fucked Mary last
night," that there was a good
deal said in German, but
no more in English than she
has stated as she believes,
That Mrs Philipson & witness
went up stairs and Mrs. Philipson
asked witness what Mrs Peltier
said, and wanted witness to
explain to her. That Witness
Mr & Mrs Philipson went home
together that night after the
conversation above spoken of

and were talking on the way about what Mrs Peltier said. That Sunday week witness & Mrs Peltier was at house of Mrs & Mr Philipson. That Mrs Peltier speaks very broken English & is hard to understand. On cross examination witness said she did not on last Sunday two weeks at Mrs Philipsons house in presence of Mr & Mrs Philipson, say that she heard Jeff speak the words testified to by Mrs Philipson. That on that occasion she told them she would not swear that she heard ^{said} words. That Mrs Philipson said she would swear that she heard them and that witness would have to swear to it, That Mr Philipson rose up off the bed and appeared mad and said that witness would get into the penitentiary if she did not swear to the words that his wife swore to & swear the truth, or that she heard the words or something to that effect.

Mrs. P.

Mrs. Petter was then introduced by Defts and was understood to say the only words she spoke in English was, there goes that man that fucked Mary, could not be understood very well. Deft then offered to ask the following questions to witnesses & offered such evidence in mitigation of damages the questions being reduced to writing questions objected to objections sustained to the ruling of the Court in sustaining the objections defts by attys then & there excepted. This was all the evidence in the case. The Court then gave the following instructions (Defendants Instructions)

The Court instruct the Jury for Defts. That you are to be the Judges of the Credibility of the witness and to arrive at the weight of the testimony to be given to each witness on the stand, you are to take into consideration their manner on the stand, their

readiness to answer questions for the party calling them. Their being contradicted by other witnesses - and if you believe they have been contradicted by other witnesses in any material part of their testimony then you have the right to disregard their evidence entirely, given That before you can find defendants guilty you must believe from the evidence that some one set of the words have been proven substantially as set out in the declaration and unless you so find, your Verdict should be not guilty, given

The Court instructs the Jury that before you can find the defendant guilty, you ^{must} believe from the evidence that the words were spoken of and concerning the said plf Mary, having had connection with one Fritz meaning Nicholas Fritzhouse and not not Fritzuse, and if the proof

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shows it to have been said with reference to one Fritzuse, and not Fritzhouse as alleged in the declaration, you should find the deft not guilty.

Refused

I do not think the evidence warrants this instruction

The Court instructs the Jury that you have the right to consider the whole conversation which took place at the time of the speaking of any of the slanderous words if you find such to have been spoken and if you believe that the reason she stated as to why she spoke the words, were stated at that time, you have the right to weigh the whole together, and if you further believe from the weight of the circumstances and proof that the deft was not prompted by malice, such facts may be considered in mitigation of damages, given.

(Plaintiffs Instructions)

No 1 The Court instructs the Jury for Plaintiff that if you are satisfied from the evidence that Sophia Peltier wife of John Peltier uttered the slanderous words, or any set of them, as charged in plaintiffs declaration, you will find Defts guilty, and assess the damages at such amount as you may think proper, under the evidence in the case not exceeding five thousand dollars. Given

No 2 That if from the evidence you believe the Defts are persons of property and influence in society, and that the plaintiff is a female of small pecuniary means, and of humble position in society, you may take these facts into consideration in fixing the amount of damages to be assessed in this case,

Given

And the Jury returned into Court the following verdict.
We the Jury find Defts guilty


30 and assess the damage at five hundred dollars. Defts entered a motion for a new trial & filed the following causes on the motion for new trial,
State of Illinois }
Marion County }

Mary Mite &c }
vs
Sophia Peller
et al }

- And now comes the Defts & moves the Court to grant him a new trial, in this cause because,
The verdict is against the
2 law and against the evidence
3 and because the Court admitted improper evidence to go to the Jury
4 Because the Court excluded proper evidence from the Jury
5 Because the Court gave improper instructions to the Jury for the plf.
6 And because said proceeding was otherwise illegal &c
Stoker & O'Melveny

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Court overruled motion for new trial + entered Judgment on the verdict, to the ruling of the Court in refusing the new trial. Defts. then and there excepted. Defts prayed an appeal which was granted on filing bond in \$500 with security to be approved by Clk in 30 days + bill of exceptions to be presented + signed at Washington County Circuit Court at August term 1868, and Defts pray ^{that} this their bill of exceptions may be signed + sealed, which is done.

Silas L. Bryan 
2^d Ind. at Ills

And afterwards to wit on the 24th day of September 1868, comes the Defendants and file their Appeal Bond herein which is in words and figures following to wit:

Know all men by these presents that we Sophia Pettier and John Pettier and

of the County of Marion and State of Illinois, are held and firmly bound unto Mary Mite who sues by her next friend John Mite in the penal sum of Eight hundred Dollars lawful money of the United States for the payment of which well and truly to be made we and each of us bind ourselves, our heirs executors and administrators jointly and severally, firmly by these presents sealed with our seals and dated at Centralia this 23rd day of September AD 1868,

The condition of the above obligation is such that whereas the said Mary Mite who sues by her next friend John Mite did on the 28th day of August AD 1868 at the August Term of the Circuit Court then being holden within and for the County of Marion and State of Illinois, obtain a Judgment, against the above bounden

Sophia Peltier and John Peltier
for the sum of Five Hundred
Dollars and costs of suit
from which Judgment the
said Sophia Peltier and John
Peltier have prayed for and
obtained an appeal to the
Supreme Court of said State,

Now if the said Sophia
Peltier and John Peltier shall
duly prosecute said appeal
and shall moreover pay the
amount of the said Judgment,
costs, interest and damages
rendered and to be rendered
against them the said Sophia
Peltier and John Peltier in case
the said Judgment shall be
affirmed in the said Supreme
Court then the above obligation
to be null and void, otherwise
to remain in full force and effect,

Sophia Peltier *Seal*
Jean Peltier *Seal*
John Betz *Seal*
Sebastian Lieberheimer *Seal*
D. L. Renault *Seal*

Approved by
me this 24th day
of September A.D.
1868.

H. B. Moore Clerk
by D. R. Moore *Seal*

State of Illinois } ss
Marion County }

I H. C. Moore Clerk
of the Circuit Court in and for the County
in the State aforesaid do hereby certify the
following to be a true and correct transcript
of the Records and proceedings had in the above
entitled cause as the same remains on file
and of Record in my Office.

Witness my hand and official Seal
this 18th day of March A.D. 1869
H. C. Moore Clerk



ERRORS ASSIGNED.

1st. The Court erred in admitting testimony for the Pl'ff of the pecuniary condition and social standing of the Pl'ff, Mary Mite.

2d. The Court erred in admitting testimony for the Pl'ff of the pecuniary condition and social standing of John Mite, father and next friend of Pl'ff.

3d. The Court erred in giving Plaintiff's second instruction.

4th. The Court erred in overruling motion for new trial, because,

The declaration charges that the words used were to impute the crime of fornication to the Pl'ff, but the evidence fails to show that the Pl'ff was an unmarried woman.

Smith & Jones Attys for Pl'ff

Joined in Error ~~and~~ ~~by~~

Cassey & Wright and J. S. Cassey
attys for Defs in Error

77 — 30

Many Mite by her
with friend John Mite
John Pettis and
Sophia Pettis

Recd

Filed Dec 18 69
R.A. Willard
C.M.

\$13.00

In the Supreme Court, State of Illinois.

FIRST GRAND DIVISION. JUNE TERM.

A. D. 1869.

SOPHIA PELTIER and JOHN PEL-
TIER, Appellants,

vs.

MARY MITCHELL a Minor, who sues by her
next Friend, John Mitchell Appellee.

} Appeal to Marion.

BRIEF OF APPELLEE.

The declaration in this case is in the language of the Statute. (Scates Comp., 1137.) Elam vs. Badger, 23d Ill. 500.

The slanderous words of appellant, without inuendo, impute the crime of fornication, and the averment that plaintiffs thereby intended to charge her with being guilty of the crime of fornication, "does not restrain and limit the meaning of the words.

Besides the evidence shows that the plaintiff was thirteen years old and the suit is brought by her father as next friend. If she was married, the defendants should have pleaded the coverture. Failing to do so, any defect of that character is cured by verdict. Ist Chitty's Pleading. 673; Wallace and Holmes vs. Curtiss, 36th Ill. 159.

The declaration avers that the beneficial plaintiff was a virgin. The proof shows she was thirteen years old, and sued by her father as next friend. The fair inference is that she was unmarried.

The Court will not disturb the verdict of the jury unless the finding is palpably wrong. French vs. Lowry, 19th Ill., 158; Bush vs. Kindred, 20th Ill., 93; Carpenter vs. Ambrosion, 20th Ill., 170; Cross vs. Carey, 25th Ill., 362.

In action of slander, the plaintiff may give in evidence *his own rank and condition* of life to aggravate the damages. Hilliard on Torts, 1st Vol., Page 446, Sec. 208; Lamea vs. Buffington, 3d Mass., 546; Burnett vs. Hyde, 6th Conn., 24; Beecher vs. Stephen, 2 Wharton's Reports, 314.

The record shows in this case the most wicked viciousness on the part of appellant. There is no pretence at justification, and the denial seems to have been a mere formal matter; the allegations in the declaration are proven ~~by and~~ ^{beyond} controversy.

CASEY & DWIGHT and T. S. CASEY,

Attorneys for Appellees.

Letter that

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Note a minor to

Brief
of Appeller

Friede & Tugend 1809
W. H. Wilbanks
Clerk

SUPREME COURT.

STATE OF ILLINOIS.

FIRST GRAND DIVISION.

JUNE TERM, A. D., 1869.

SOPHIA PELTIER and JOHN
PELTIER, Appellants,

vs.

Appeal from Marion.

MARY MITC, who sues by JOHN
MITC, her next friend, Appellee.

ABSTRACT OF APPELLANT.

- 1 Caption.
- 2 3 Affidavit for capias.
- 4 5 Capias and summons.
- 6 7 8 Bail bond.
- 9 Declaration in slander.
- Commencement in usual form.

For that Whereas, The Plaintiff now is a virgin and chaste woman, and from the time of her nativity hath been so, and hath been accounted esteemed, and reputed as such among her neighbors, as well as of good reputation and fame by all other people, and hath all her lifetime continued untouched and unsuspected of the atrocious crime of adultery, of fornication, or any such enormous crime; nevertheless the said Defendant, Sophia Peltier, who is the wife of said John Peltier, well knowing the premises, but contriving, &c., to injure the Pl'ff, in her good name, and to bring her into disgrace and subject her to the penalties provided in such cases, to wit. on the 30th day of June, 1868, in the presence and hearing of divers people, in a certain discourse, then and there had of the Pl'ff, did falsely, &c., speak, &c., of the Pl'ff and of the charge of fornication, and thereby intended to charge the Pl'ff with the crime of fornication, &c., did utter the following false and malicious words, to wit, &c. [Here follow the words, charging that she had had unlawful sexual intercourse with one Nicholas Frilyhouse, and that she was a whore, and other scandalous words.] meaning to charge that the Pl'ff, being and always having been, an unmarried woman, had been and was guilty of the crime of fornication, by means of which said false, &c., words, so spoken, the Pl'ff has fallen into disgrace, &c.

- Second count—same as above, except changing the words spoken.
- 15 Def't's plea—Not guilty.
- 16 Trial by jury.
- 17 Verdict: We, the jury, find for Pl'ff, and assess the damages at

five hundred dollars.

Motion by Def't for new trial, and motion overruled and judgment on the verdict, and appeal prayed.

18 Grounds of motion for new trial:

- 1st. Court admitted improper evidence.
- 2d. Court excluded proper evidence.
- 3d. Court gave improper instructions for Pl'ff.
- 4th. Proceedings otherwise illegal.

19 Bill of exceptions filed.

Testimony for Pl'ff: Mrs. Phillipson, witness for Pl'ff, knew both parties. Several weeks ago, Mrs. Peltier, Def't, wife of John Peltier, had a conversation with witness, at Def't's house. Mary Mite, Mrs. Smitzer and Def't were present. Def't, Mrs. Peltier, said to witness, &c., [words charged in declaration;] that these words were repeated several times by Sophia Peltier. Witness understood words spoken to refer to and mean Mary Mite, Pl'ff; that Def'ts were persons of property; that they were living in a brick house, and were of good standing in society. [Pl'ff then asked witness the pecuniary circumstances of Pl'ff, Mary Mite, and her father, John Mite, who brings this suit. Def'ts objected to the question, and Court overruled the objection, and admitted the testimony, and the Def't then and there excepted.] Answer: they are both poor. [Pl'ff then asked this question: What does her father and next friend follow for a living? Objected to by Def't's att'ys. Court overruled the objection, and Def't then and there excepted.] Answer: He works in the blacksmith shop, and the Pl'ff has no property.

22 Pl'ff introduced Mary Mite: Heard conversation spoken of by first witness. Statements: States that she (Pl'ff) was 13 years old last February.

Pl'ff introduced Nicholas Fritzhouse: Stated he heard Def't, Sophia Peltier, use the words charged in declaration.

Pl'ff introduced Peter Wehrheim, who is acquainted with Def'ts. They are husband and wife. Sophia owned separate property, and John Peltier several houses. Pl'ff here closed.

24 25 Def't's testimony unimportant so far as errors complained of are concerned.

27 28 Def't's instructions.

29 Pl'ff's instructions.

No. 2. If from the evidence you believe the Def'ts are persons of property and influence in society, and that the Pl'ff is a female of small pecuniary means, and of humble position in society, you may take these facts into consideration in fixing the amount of damages to be assessed in this case.

30 Jury retire and return and render a verdict for \$500 for Pl'ff.

31 Motion for new trial overruled and judgment on the verdict, and Def't's counsel then and there excepted, and prayed an appeal.

32 32 Appeal bond.

ERRORS ASSIGNED.

1st. The Court erred in admitting testimony for the Pl'ff of the pecuniary condition and social standing of the Pl'ff, Mary Mite.

2d. The Court erred in admitting testimony for the Pl'ff of the pecuniary condition and social standing of John Mite, father and next friend of Pl'ff.

3d. The Court erred in giving Plaintiff's second instruction.

4th. The Court erred in overruling motion for new trial, because,

The declaration charges that the words used were to impute the crime of fornication to the Pl'ff, but the evidence fails to show that the Pl'ff was an unmarried woman.

Smith & Jones
Attys for Appellants

SUPREME COURT.

STATE OF ILLINOIS.

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vs.

Appeal from Marion.

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MITC, her next friend, Appellee.

BRIEF OF APPELLANT.

1st. The Court erred in overruling motion for new trial, because the declaration charges that the words were spoken with intent to impute to Pl'ff the crime of fornication, and the declaration alleges that the Pl'ff was an unmarried woman, but the testimony fails to show that she was an unmarried woman. The statute declares that if words are falsely uttered, which in their common acceptation shall amount to charge any person with having been guilty of fornication or adultery, they shall be actionable. (521 Rev. Stat. 1845) In order to frame a good declaration under this statute, it is necessary to allege that the words charged were intended to impute to Pl'ff either fornication or adultery, and if it is intended to impute fornication, there should be an averment in the declaration that the Pl'ff was unmarried, and the proof must correspond. (2 Gil., 723-4. Patterson and wife vs. Edwards and wife.) This declaration, by innuendo, charges that the Def't, by the publication of the words intended to impute the crime of fornication. This "restrains and limits the meaning of the words." *Sanford vs. Goddes*, 13 Ill., 329.

A party cannot commit the crime of fornication unless *unmarried*. (1 Bouvier's Law Dic., 606.) There is no evidence in the record that the Pl'ff is unmarried.

2. The Court erred in admitting the testimony on page ²¹ 4 of the record as to the pecuniary condition and social standing of Mary Mitc, Pl'ff, and John Mitc, her father and next friend. It is not competent to prove the poverty or wealth, obscurity or prominence or social position of the Pl'ff. The character of a person, in any condition, is not affected by their pecuniary or social prominence. The condition of the father's circumstances could under no state of pleading have been admissible, and its admission in evidence had a manifest tendency to aggravate the damages.

SMITH and JONES,
Att'ys for Appellants.

In Supreme Court
First Gr. Div. June 1. 69
No 77

Sophia Pelton &
John Pelton
Appellants

vs } Appeal
from
Marion

Mary Mite who
sues &c
appellee

Filed 3rd June 18 69
R. D. Williams
clerk

SUPREME COURT

STATE OF ILLINOIS

FIRST GRAND DIVISION

58855-24]

Pelter et al

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Write a Memoir &c

Def of Appellee

Filed 4th June 1809
 W. M. M. M.
 Clerk

Peltier

^{vs}
Miet.

Laurence J.

This was an action brought by Mary Miet against Sophia Peltier and John Peltier her husband, for slander by the said Sophia in charging the plaintiff with perjury. The speaking of the words was proven, and the jury found a verdict for the ~~defendant~~ plaintiff upon which the court rendered judgment. The defendants bring the record to this court, and allege as a ground for reversal that the plaintiff did not show she was an unmarried woman. It is true this was not formally proven, but no question was made in regard to it upon the trial, and facts were proven from which the jury had the right to infer it. ~~The~~ The plaintiff

was constantly called Mary
Miet by the witnesses, and
~~her father is she was proven~~
she was spoken of as the
daughter of John Miet, and
as being only thirteen years
old. ~~From these circumstances~~

It can not reverse the judgment
on the ground that the verdict
was unsupported by the evidence,
merely because the jury, from
these circumstances, found that
the plaintiff was unmarried,
and that the offense under
proven to have been spoken
was a charge of fornication
as averred in the declaration.

~~Interposition~~

It is objected that the
court erred in admitting evidence
of the ^{occupation and} pecuniary condition of the
plaintiff and her father. But in
actions of this sort the plaintiff
is always permitted to prove his
condition in life as bearing on the
question of damages. ~~Hilliard~~
on torts 446.

Judgment affirmed

Altus 30
Mist 77

Opium
Lamenc.

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O, R

Recorded

SUPREME COURT.

STATE OF ILLINOIS.

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In Supreme Court

First Cr. Div. June 4. 69
No 77 — 30

Sophia Peltier &
John Peltier
Appellants

} Appeal
from
Marion

May Mitc
Att. Gen. &c
Appellee

8855

Filed June 1869
W.D. Whitcomb
Clerk

SUPREME COURT

FIRST CRIMINAL DIVISION

FIRST CRIMINAL DIVISION

JUN 11 1869