

8474


No. _____

Supreme Court of Illinois

Jeptha Ray

vs.

I. F. Wooten

71641  7

Pleas and proceedings had in
in the Circuit Court within for
the County of Marion State
of Illinois in a certain cause
heretofore pending in said Court
wherein Josiah T. Wooten was
plaintiff and Jephtha Roy defen-
dant

Be it remembered that
heretofore to wit on the fourth day of July
AD 1855 the said ^{plaintiff} ~~defendant~~ filed in the
Office of the Clerk of the Circuit Court of
said his process for a summons against
said defendant which process is in the
words & figures following to wit

State of Illinois } of the September Term 1855
Marion County } of the Marion Circuit Court
Josiah T. Wooten }
vs }
Jephtha Roy } Con Demoy \$20000

W. P. Marshall esqr Clerk
of Josiah T. Wooten the plaintiff in this
cause makes you sure, that summons
Jephtha Roy the defendant in this cause
to answer unto the plaintiff in his action
of "Trespass on the case for Slander to his
damage as he says of Ten Thousand Dollars
When, when ye have you the process
Salem Illinois July 3rd 1855

Thomas T. Wooten atty for P. W.

And upon the filing of said process
a summons^{was} issued against said defendant
in the word & figures following viz:

"State of Illinois }
Madison County } The People of the State of
Illinois To the Sheriff of said County
Greeting. We command you to summon
Septa Roy if to be found in your County
to appear before the Circuit Court of said
County on the first day of the next term
of to be holden at the Court House in Salem
on the third Monday in the month of Sep-
tember next to answer Josiah S. Wooster
in his action of "Trespass on the Case" for slander
to his damage as he says of Two thousand dollars
and hereof make due return to our said Court
as the law directs

Witness B. F. Marshall clerk
of our said Court, and the judicial
Seal thereof at Salem this 4th
day of July A. D. 1855
B. F. Marshall clk.

Upon the reverse of which summons is the
following Sheriff's return.

Return served on the defendant Septa Roy
by reading the writ. this 12th day of July 1855

James Chance Sheriff
By Logan Shelton Deputy

And afterwards, to wit; On the 29th day of August
1855 the said Plaintiff filed his declaration
against said Defendant in the words & figures
following, to wit;

State of Illinois } September Term 1855
Marion County } Marion Circuit Court

Marion County, to wit;

Josiah H. Wooters complains
of Jephtha Ray the Defendant in this suit being
summoned &c of a plea trespass on the case.
For that whereas the said Plaintiff now is a good,
true, honest, just, and faithful citizen of the
State of Illinois and as such hath always be-
haved and conducted himself, and until the
committing of the several grievances by the said
Defendant, as hereinafter mentioned, was al-
ways respected, esteemed, and accepted by and amongst
all his neighbors and other good and worthy
citizens, to whom he was in any wise known
to be a person of good name, fame, and credit
to wit; at &c And whereas also the said Plaint-
iff hath not ever been guilty, or until the time
of the committing of the said several grievances by
the said Defendant as hereinafter mentioned
been suspected to have been guilty of perjury
or swearing a lie, or any other crime as hereinafter
stated to have been charged upon and imputed to him

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by the said Defendant.

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By means of which said premises, the said Plaintiff before the committing of the several grievances by the said Defendant as hereinafter mentioned, had deservedly obtained the good opinion and credit of all his neighbors, and ^{other} good and worthy citizens to whom he was in any wise known to wit: at &c aforesaid. And whereas also before the committing of the several grievances by the said Defendant as herein after mentioned a certain action had been depending and which said action had been ^{there} lately tried before Josiah A. Hyde a justice of the peace of said County of Marion of which said action the said justice of the peace then and there had jurisdiction wherein one Drury Fowler was the Plaintiff and one William Holloway was the Defendant, and on such trial the said Plaintiff had been and was examined on oath and had given his evidence as a witness for and on the part and behalf of the said Drury Fowler to wit: at &c aforesaid.

Yet the said Defendant well knowing the premises but greatly envying the happy state and condition of the said Plaintiff and contriving and wickedly and maliciously intending to injure the said Plaintiff in his good name fame and credit and to bring him into public scandal, infamy and disgrace with and amongst all his neighbors and other good and worthy citizens,

and to cause it to be suspected, and believed
by those neighbors and citizens that he the said
Plaintiff had been and was guilty of perjury, and
to subject him to the pains and penalties by
the laws made and provided against, and inf-
licted upon persons guilty thereof and to
ret, harass, oppress, impoverish and wholly
ruin the said Plaintiff heretofore, to wit: On the 30^d
day of June A^d 1855 at the County of Marion afore-
said in a certain discourse which the said
Defendant then and there had of and concerning
the said Plaintiff, and of and concerning the
said action, and of and concerning the evidence
by him the said Plaintiff given on the said trial
as such witness as aforesaid, in the presence and
hearing of divers good and worthy citizens and
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 the false, scandalous,
malicious and defamatory words following that
is to say. "Joe Wooters (meaning the Plaintiff) swore
a God Damed lie, and I can prove it. He
(meaning the Plaintiff) Swore a God Damed lie and
I can prove it. He (meaning the Plaintiff) has sworn
a lie. Joe Wooters (meaning the Plaintiff) has
sworn a lie. He (meaning the Plaintiff) has foresworn
himself. He (meaning the Plaintiff) has sworn a
God Damed lie and I can prove it.

He (meaning the Plaintiff) swore falsely on the trial and I can prove it. Meaning the said trial, and thereby then and there meaning that the said Plaintiff in giving his evidence as such witness on the said trial as aforesaid had committed wilful and corrupt perjury.

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 And afterwards, to wit; on the day and year aforesaid at &c aforesaid in a certain other discourse which the said Defendant then and there had in the presence and hearing of divers other good and worthy Citizens the said Defendant 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 the false scandalous malicious and defamatory words following that is to say "He (meaning the said plaintiff) swore to a lie and I (meaning the defendant) can prove it" thereby then and there meaning that the said plaintiff had been and was guilty of "Swearing falsely"

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 And afterwards, to wit; on the day and year aforesaid at the County and State aforesaid in a certain other discourse which the said Defendant then and there had with the said plaintiff of and concerning the said plaintiff,

(1)

and of and concerning the said action and of
and concerning the said evidence of him the
said plaintiff, given on the said trial as
such witness as aforesaid in the presence
and hearing of divers good and worthy
citizens of this State, then and there in the
presence and hearing of said last mentioned
citizens, falsely and maliciously spoke and
published to and of and concerning the said
plaintiff and of and concerning the said action
and of and concerning the evidence by him
the said plaintiff given on the said trial
as such witness as aforesaid before the said
Josiah A. Hyke justice of the peace as afore-
said, these other false, scandalous malicious
and defamatory words following that is to say
"You (meaning the said plaintiff) swore a
God Damned Lie and I can prove it" (mean-
ing that he the said defendant could prove
it) "You (meaning the said plaintiff) swore
a lie" thereby then and there meaning that
he the said plaintiff in giving his evidence
as such witness on the said trial before the
said Josiah A. Hyke justice of the peace
as aforesaid "had sworn falsely".

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14th And whereas also before the committing of the
several grievances by the said defendant hereinafter
mentioned a certain action had been depending

before one Josiah A. Hyke a justice of the peace within & for said County of Marion and State of Illinois of which said action said justice had then and there jurisdiction to wit: at the County aforesaid wherein one Drury Howler was plaintiff and one William Holloway was the defendant and which said action had then and there been lately tried by the said Josiah A. Hyke justice of the peace as aforesaid and on said trial the said plaintiff in this suit had been and was examined on oath and had given his evidence as a witness for and on the part and behalf of the said Drury Howler the plaintiff in said suit to wit: at the County and State aforesaid. Yet the said defendant well knowing the premises but greatly envying the happy state and condition of the said plaintiff, and to subject him to the pains and penalties by the laws of this State made and provided against and inflicted upon persons guilty thereof and to vex, harass, oppress, impoverish and wholly ruin him the said plaintiff, heretofore to wit: on the 23^d day of June A. D. 1855 at the County and State aforesaid, in a certain discourse which he the said defendant then and there had with one John P. Hyke.

of and concerning the said plaintiff and of
 and concerning the said action and of and
 concerning the evidence of him the said plain-
 tiff given on the said trial as such witness
 as aforesaid in the presence and hearing
 of divers good and worthy citizens of this
 State, 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 action and of
 and concerning the evidence by him the
 said plaintiff given on the said trial as
 such witness as aforesaid, these false, scand-
 alous, malicious and defamatory words
 following, that is to say.

Copy

"Joe Wooters (meaning the said plaintiff) swore
 a damned lie and I (meaning Defendant)
 can prove it." "He (meaning the said plaintiff)
 swore a lie and I can prove it" meaning
 that he the said plaintiff in giving his evidence
 as such witness on the said trial before the
 said Justice of the Peace as aforesaid had
 been guilty of swearing falsely and which
 said words in their common acceptation
 do amount to such charge, viz that the said
 plaintiff had sworn falsely on said trial

By means of the committing of which said several grievances by the said defendant as aforesaid, the said plaintiff hath been and is greatly injured in his said good name fame and credit and brought into public scandal infamy and disgrace with and amongst all his neighbors and other good and worthy citizens of this State, inasmuch that divers of those neighbors and citizens to whom the innocence and integrity of the said plaintiff in the premises were unknown have on account of the committing of the said grievances by the said defendant as aforesaid from thence hitherto suspected and believed and still do suspect and believe the said plaintiff to have been and to be a person guilty of Perjury or of having sworn falsely, so as aforesaid charged upon and imputed to him by the said defendant, and have by reason of the committing of the said grievances by the said defendant as aforesaid, from thence hitherto wholly refused and still do refuse to have any transaction acquaintance or discourse with him the said plaintiff as they were before used and accustomed to have and otherwise would have had

And also by means of the premises the said plaintiff hath been and is otherwise much injured and damaged to wit at the County and State aforesaid.

To the damage of the said plaintiff of Two Thousand dollars and therefore he brings his suit &c

Houts & Hamilton
Atty for P[er]ff

And afterwards to wit: at the September term 1855 of said Court the following order was made by the Court, to wit;

Josiah H. Wooters }
vs } Case
Jephtha Ray }

Ordered by the Court that this Cause be continued until the next term of this Court.

And afterwards, to wit: at the May term 1856 of said Court the following order was made by the Court, to wit;

Josiah H. Wooters }
vs } Case
Jephtha Ray }

Ordered by the Court

That this Cause ¹² be continued until the
next term of this Court.

And afterwards to wit: at the September term
1856 of said Court the following order was
made by the Court. to wit:

Josiah H. Wooters }
vs } Case
Jephtha Ray }

Ordered by the Court
that this Cause be continued until the
next term of this Court.

And afterwards to wit at the March term
1857 of said Court the defendant filed
his plea & notice which are in the words
& figures following to wit:

Marion Circuit Court for 1856
Jephtha Ray }
at } Slander action on the Case
Josiah H. Wooters }

And the said defendant by
Haynie & Bryan his attys comes and defends
the wrong and injury when &c and says that
he is not guilty of the said supposed grievances
above laid to his charge or any or either of
them or any part thereof in manner and

and form as the said plaintiff has above
thereof complained and of this the said
defendant puts himself upon the Country &

Haynie & Bryan Attys for deft

And the sd. Plaintiff doth the like by

Houbt & Hamilton his attorney

Notice

The plaintiff in this cause will please take
notice that I will offer in evidence on the
trial of this cause proof showing that the words
spoken of & concerning the said plaintiff & to
which he refers in his declaration in this
cause are true, 1st That the words spoken
of and concerning the said plaintiff were applied
to that portion of his testimony in the said
cause before Josiah A. Hyde justice which
related to the manner in which this defendant
had hauled & set up, ricked or stacked for one
who was a party in the said cause
before Hyde justice, that the manner in
which this defendant had hauled & set up
ricked or stacked certain Corn or Corn fodder
for said party as aforesaid became
and was a matter of difference on the trial
of said cause & that the words spoken as aforesaid
referred wholly to the testimony of the said plaintiff given
on the said trial in reference to the subject of hauling
& setting up ricking or ~~stacking~~ stacking of said fodder

Haynie & Bryan

And afterwards to wit. at the March Term 1857 the following order was made by the Court to wit:

Josiah H. Woodus	} Case for Slander
vs	
Jephtha Ray	} Monday March 9 th 1857

Came the said defendants by Haynie & Bryan their attys and upon their motion ordered by the Court that said defendants have leave to file additional notice of special matters without prejudice to said ptff.

And afterwards to wit: at the March term of said Court to wit on the 11th day of March A.D. 1857 the defendant filed an additional notice, in the words & figures following to wit:

The ptff will also take notice and he is hereby according to the statute in such cases made and provided, notified, that on the trial of the said Cause the defendant will offer evidence to prove that the following words alleged to have been spoken of & concerning the said ptff are true viz "He swore falsely on the trial & I can prove it" & "that He swore a lie & I can prove it"

[Handwritten signature]

And that deft to prove the truth will offer to show that said words were uttered relative to a certain time before one Josiah Hooke of P between one Drury Fowler plff and Wm Holloway deft wherein the said Wooters was sworn as a witness, that on the trial of said cause said Wooters testified that certain Corn (called shock or fodder corn) which this deft had hauled or assisted to haul had not been set up (or ricked) on end but was thrown down cross and pile when in truth and in fact the Corn had been set up by this deft and assistant one or both of them

And also that said words were spoken by deft on trial aforesaid whilst giving his testimony as a witness in the above cause duly sworn by the Court having authority to do so

Bryan & Haynie for defts

And afterwards to wit: at the March term of said Court to wit On the 11th day of March A.D. 1857 the following order was made and entered of Record to wit:

Josiah F. Wooters }
vs } Case for Slander
Jephtha Ray }

And now at this day came the said plain-
 tiff by Houts & Hamilton his attys and the
 said defendant by Haynie & Bryan his
 attys and issue being joined let a jury come
 thereupon came a jury to wit: Thomas Cully,
 Andrew Ray, Eli Copley, Samuel Sheafelt
 Henry Piles, David Brazel, Henry Holt, Andrew
 Hultz, Hill Hutton, Daniel Doolen, Jasper
 N Jones & Augustin W Beasley, twelve
 good and lawful men who being elected
 tried & sworn well & truly to try the issue
 joined, after having heard the evidence
 & arguments of Counsel were instructed by the
 Court and retired to consider and deliberate
 of their verdict and afterwards returned into
 Court the following verdict viz "We the jury
 find the defendant not guilty." whereupon the
 said plaintiff by his Counsel enters his
 motion for a new trial.

And afterwards to wit: at the March term
 of said Court to wit: on the 19th day of
 March A D 1887 the following order
 was made by the Court & entered of Record viz:

Josiah H Wooters }
 vs } Case for Slander
 Jephtha Ray }

Came again said parties by their Attys
 & the Court being fully & sufficiently advised
 of & concerning the matter of said plaintiff
 for a new trial, it is ordered that a new trial
 be granted in this cause & that this cause
 be continued until the next term of this Court.

And afterwards to wit: at the August Term
 1857 of said Court the following order was
 made & entered of Record to wit:

Josiah F. Wothers } Case for Slander
 vs }
 Jephtha Ray } August AD 1857

And now at this day
 Came the said plaintiff by Houts & Onelvang
 his attys and the said deft. by Haynie & Bryan
 his attys and issue being joined let a jury
 come & thereupon came a jury to wit:
 Wesley Oliver, John W. Nichols, James
 Craig, F. G. Cokerell, R. M. Nichols,
 John Carter, Elias Meader, Hiram Allman,
 Wm McGuire, John W. White, Henry Bass
 & J. N. Oster, twelve good & lawful men
 who being elected tried & sworn well & truly to
 try the issue joined after having heard the
 evidence & arguments of Counsel retired to consi-
 der of their verdict and afterwards returned

into Court the following verdict: "We the jury find the defendant guilty and assess the plaintiffs damages at Two hundred and Seventy five dollars." Whereupon the said defendant by his Counsel enters his motion for a new trial, which motion is denied by the Court. It is therefore ordered & adjudged by the Court that the said plaintiff do recover of & from the said defendant the sum of \$275.00, as aforesaid assessed together with his costs in this behalf expended & may have Execution therefor &c

Whereupon the said deft. prays an appeal to the Supreme Court which is allowed by the Court upon deft. entering into Bond within thirty days with Burrell J. Crane, Eliza Ray, & Mary S. Ray as sureties in the penalty of five hundred dollars. It is further ordered by the Court that the Bill of Exceptions herein be agreed upon by Saturday of the next Term of the Washington Co. Circuit Court.

And afterwards to wit: On the 23rd day of October A.D. 1857 the said defendant filed in the office of the clerk of the Circuit Court his bill of Exceptions duly signed by the judge of said Court which bill of exceptions is in the words & figures following to wit-

Do it Remembered that at the August
Term of the main Circuit Court for 1857 a Certain Cause
Wherein one Josiah W. Hooters was Plaintiff and
Jephtha Ray was Defendant Comd on to be heard &
tried and said Plaintiff to maintain his Cause
introduced witnesses as follows to wit.

Asah Fyke who testified that he and Defendant
Ray took a walk out in the orchard of Justice
Fyke the day of the trial between Fowler & Holoway
& while the Jury were out on the case and that
Ray said for Hooters sworn a O-m Lie & he
could prove it) I can prove it that he (meaning
Plaintiff had sworn a O-m lie & I can prove
it if he wants me to he seemed to be mad - & refered
to the testimony of Plaintiff on the trial before the
Justice Josiah W. Fyke in reference to the shock
corn of Holoway Witness & Defendants were taking
about the testimony of Plaintiff & Defendant given
on the trial which had just ending in reference to the
shock corn of Holoway and understood Defendants
to make the charge in reference to the shock corn
being thrown down crop and pile. & on the Sunday
following had about the same conversation.

John P. Fyke testified that he was present at the
time but does not recollect the evidence of
Plaintiff or defendant in reference to the Shock
Corn Saw Orfenat a few days after the trial
and asked him why he got so mad on the

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day of the trial and he said Joe Rooters
(meaning Plaintiff), sworn a God O-m lie & he
could prove it. Witness cautioned him about
making such charge and Defendant said Joe
(meaning Plaintiff) had sworn a God O-m
lie & he could prove it if he wanted him to under-
stand Defendant to refer to the testimony of plain-
tiff in reference to the Shock Corn in the trial
before Josiah W. Lyke Justice in June 1835 in
which Holoway & Fowler were parties. Then Plaintiff
closed his case Defendant then introduced
Thomas Harting who testified that he helped
Defendant haul the fodder and helped set it
up. Hauled it from one field and set it up
in Fowlers field. Helped to haul it all tree loads
it was shocked or ricked up well done in the
fall of 1834 before the trial before Josiah W. Lyke
in June 1835 Cross examined. Saw it again that
fall late it appeared to be down a good deal
We hauled it all in one day.

W. Hall testified that he passed by & saw
the shock corn setting up in reasonable good order
it was on Holoways place Mr Holoway was
living there then Fowler had been living there
but moved away it in the fall of 1834 suit
between Holoway & Fowler in June 1835 Could
not be certain which one live on the place

at the time he saw the Corn fodder. There had
been no rain on the fodder.

Crop examined.

It was Holoway's place. I don't know whether
Howler had got away or not.

William Sinclair testified that he saw the
Shock Corn in the fall of 1834 it was shocked
or ricked up in reasonable good order but looked
tangled when he saw it.

Deposition of William England

He had known the
Parties 19 years. he was present at a trial between
Erury Howler as Plaintiff & Wm Holoway as
Defendant before Josiah W. Hyde Justice in 1835
had been summoned as a Juror & served in that
Capacity on said trial. The cause of dispute
between Howler & Holoway was that Howler accused
Holoway of suffering his corn to be destroyed.
Holoway attempted to bring an offset against
that on the ground that Howler's chickens grass
& Dogs had destroyed corn for him that he had
had hauled & put on the place the corn referred to was
Shock Corn Plaintiff was a witness for Howler
and Defendant was a witness for Holoway.
In answer to a question of Mr H. G. Burrow
who was one of the Counsel before the Justice
in the cause Burrow having asked the question
had Mr Holoway any corn then (Howler)

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Answered he had some corn hauled there and
thrown down in the corner of the finer crop and
pile very near making a motion at the same
time with his left hand indicating the direction
in which it was thrown. Witness recollects the
evidence or testimony of Wooters because Ray
the Defendant was called to testify immediately
after Wooters the Plaintiff and Ray gave evidence
that conflicted with that of Wooters and that in
a few days he heard there was to be a slander
suit commenced about the matter and changed
his memory with the testimony of Plaintiff &
Defendant expecting that he would be called
as a witness, that some time after the trial
before the Justice Plaintiff Wooters called
upon Witness to know what he would swear
in the case as to the evidence or testimony
which the Plaintiff gave on the trial about
the shock Corn and Witness told him that
he understood him say what he has above
stated and to this Wooters made no reply
that Wooters said a great deal in giving his
evidence and that after giving the testimony
above recited he spoke of a conversation that
had taken place a short time before the trial
between Heloway & Fowler the conversation
that Wooters detailed was about the
corn fodder. but Witness having charged

his mind about the disputed question alone did not recollect all that was said.

Amos Morrison testified that he was at the trial between Fowler & Holoway they were contending about shock fodder and damages to the same. Fowler had fodder in the field and it was destroyed. Holoway also had his fodder hauled to the place where Fowler was living & it had been destroyed that Wooters the Plaintiff said in giving his testimony that the fodder of Holoway had been hauled and thrown down in the corner of the fence or field crop & pile in every way when Holoway did not tell Ray to put it. Witness stated as a reason why he remembered the testimony of Wooters was that Ray whispered to him at the time and said that is not so. He had hauled the fodder and ricked it up and that Ray got up then and swore that he had hauled and ricked up the shock corn or fodder that Wooters got mad and said to Ray that he was too little to dispute his word when he was under oath.

Examined

There was a good many people there when Wooters testified as above he said afterward in his testimony that Holoway did not blame Fowler about it, was sitting down close by

Wooters when he testified did not take it that he was giving a conversation at the time but after giving this evidence he spoke of a conversation that he had heard between Holoway & Fowler

William Bundy testified that he was a juror on the trial before Squire Hyde Wooters & Ray were witnesses. Wooters stated that the fodder was hauled and thrown down and Ray in his evidence stated that the fodder was set up they got into a dispute about it and Wooters told Ray he was too little to dispute his word that he remembered the testimony of both because of the quarrel between them that Ray remarked when he stated that the corn was hauled and shocked up that that was the fact about it and that it was not as Wooters swore and that the quarrel began.

Cross examined

Wooters might have said something about a conversation at the time and might not rather thought he did refer to conversation while giving his testimony said a great deal about a case. Ray stated only in his evidence that the fodder had been hauled and set up but did not think Wooters said he saw the corn

Martin Adams testified that he was a
juror on the trial between Holoway & Fowler before
Squire Justice, that the controversy was
^{fodder or shock corn that Worters said in his testimony}
about the destruction of corn, that the corn
fodder had been hauled and thrown down in
the corner of the fence crop and pile. That
Worters said much in his testimony about the
case that Ray was called the next witness
after Worters and testified that he had hauled
the corn fodder and set it up and ~~and~~ that
Worters had sworn that it was hauled and
thrown down crop & pile which was not so
that Worters then became mad and told Ray
that he was too little to dispute his word
that after giving this testimony while testify-
ing Worters stated something about a con-
versation that he had heard between Holoway
& Fowler a few days before the trial at Squire
Justice Worters was not reexamined after Ray

David Hall testified that he was at
the trial as juror that Worters stated in giving
his evidence that the corn fodder of Holoway had
been hauled and thrown down crop and pile in
the corner of the fence, said a good deal in giving
his testimony. That he remembers what Worters
said because Ray was called to testify after
Worters and stated that he hauled and set
up the corn fodder of Holoways that Worters

stated a conversation that had been previous to that and though from Wooters testimony that he had been there and saw the corn fodder he had spoke of a conversation before & was asked what was the condition of the corn fodder. That this statement as witness believed was not connected with the conversational talk & when asked he first said it was hauled and thrown over the fence crop & pile for the Geese & Dogs to destroy

Richard Ormsworth testified that he was Counsel in the case before Squire Tyler in 1855 Holway and Fowler parties dispute about corn fodder witness asked Wooters as to the condition of the Holway fodder and Wooters said that the corn fodder had been thrown over the fence in a heterogeneous mass or had been thrown over the fence crop and pile as it appeared to him that the corn was not in a condition to save. Ray was then called on the stand & he said Wooters need not say that the fodder was hauled and thrown down crop & pile for it was not so. That the fodder for he had hauled it and put it up in good style Wooters then said to Ray that he was too little to dispute his word on oath. Wooters had passed through his examination in chief before witness reached the Justice office and then he cried

Examined him. heard no such Chat as a
Conversation detailed and would have remem-
bered it if there had been such after he entered
the Trial as Counsel Wooters had ^{asked} witness
what he would swear in this case after he
had been summoned as a witness for Plaintiff
and Witness told him that he would swear
as above and then Wooters asked Witness
if the evidence would do him any good &
Witness told him he thought not & he told
him that he need not come to the Trial
at Court if he had any thing to do at home

William Helway testified that he was one
of the parties in the trial before Squenshope
in June 1855 the controversy was about Corn
Godder was at the trial and heard testimony
of Wooters & Ray. Wooters said the Corn
Godder was hauled wanded up in great
wads and wholped it down crop and pile
Ray was then called on the stand and stated
that he had hauled the fodder & set it up and
disputed Wooters word and they grew mad
and quarrelled - Wooters came with Fowler
to see witness a few days before the suit at
Lyke. Whereupon Defendant closed his case
and then Plaintiff offered the following witnesses
as relating testimony - Witnesses

Joseph A. Hyde testified that the trial was before him he would not be distinct as to what Wooters testified about the condition of corn but was distinct that he gave it as a recital of a conversation. He then stated he had been present at a conversation between Holway & Fowler as he closed Fowler said Holway my corn has also been destroyed & you dont blame me, Witness said the part of Wooters evidence about which he was not distinct was what he said about the hauling the corn. Wooters stated that the corn was not hauled when Holway wanted it. Wooters was then asked what the corn was worth & he said it was worth but little if anything, the time he fixed the value of the corn at the time when he said it not when it was hauled then but when he saw it. Wooters asked Holway when he closed if it was not so and he saw it was, if he made any statement as to the condition of the condition of the corn. I dont remember it;

Cross examined

Did not recollect that Wooters said anything about corn being in the fence corner or field did not recollect it as some others but as it was between him & his God that the offset was filed by Johnson about the time Boone

Came in & that all that concerned the offer
was after Brew came in

Bundy testified that he was a
juror that Wooters stated a great deal about
the contract between Adoway & Fowler that
Wooters recited what he heard pass between
Adoway & Fowler a few days before the trial
that Adoway should have said that Ray instead
of hauling & putting the fodder where he told
him hauled & threw it down in a pile
when it was destroyed Wooters was asked
what the condition of the corn was when he saw
it but did not remember what he replied
was not paying particular attention. Wooters
after giving his evidence turned & asked Adoway
if he had given his conversation correctly & he
nodded assent

Isaac Gundy testified that Brew came
in while the trial was progressing & Wooters
was testifying. The question was asked by Brew
after he detailed the conversation as to what
condition the corn was in and he answered
that it looked like it had been hauled & thrown
down crop and pile. Robert Sanders was a
Juror on the trial before Lyke. Wooters gave
in evidence a conversation talk that
Adoway said it had not been hauled
when he wanted but had been hauled

and piled in the yard & Chickens Geese & Dogs
had run over it & destroyed it he turned
them to Holoway and asked him if it was
not so & Holoway nodded his head. The
question was asked Wooters by Brewer after the
conversation talk about the condition of the corn
and he said it was bad,

Joseph Hyde testified that he was present
at the trial but that his memory was treacherous
Wooters stated the contract between the parties
Wooters was asked if he saw the corn he said
he had and then he was asked what it was
worth he said very little for it was thrown
down crop and pile & the Dogs Geese and
Chickens run over it he also gave a part
of his evidence as a conversation of Holoway
& Fowler that the conversation was that
Holoway did not blame Fowler but the man
that had hauled the fodder and put it there
that Holoway said he had directed it to be
put in one place and it had been put in
another if Wooters made other statements
Witness did not recollect them

Crop examined

Ray when he got up disputed what Wooters
had said and stated that he had hauled
and set up the corn and that what Wooters swore
was not so Witness was asked as to the quantity

between Wooters & Ray at this time the court refused to let the witness state as to that saying it had been proved often enough & the Counsel for Defendant then said there excepted to the ruling of the Court.

Thomas Phillips testified that he was at the trial heard the testimony of Wooters & Ray Wooters repeated a conversation which he heard between Holoway & Fowler. Holoway said he did not blame Fowler the corn was not put when he wanted it did not remember what question was asked Wooters or that any question was asked him.

Cross examined

Witness thought that Wooters had stated the conversation before Brown came in to the case was of the opinion that the question was put to Wooters what was the condition of the corn when he saw it Wooters replied that it was all down in a pile when Ray got up to testify he said the corn was not down in a pile but was ricked up

Examined

He said ^{the} corn was not hauled to the place where Holoway wanted it. Holoway asserted when Wooters got through stating the conversation that is was right

Dirney Fowler testified that he was one of the parties in the suit before Judge.

Wooters said Holoway said that Mr Ray had hauled the corn and thrown it down in a pile when he did not want it after he gave in the conversation he did speak of the value of the corn he said it was torn down not thrown down. If the question as to the condition was asked Wooters could not remember it Doerer came into the case after Wooters got through about the conversation of Holoway - The fodder was rather poorly set up was asked if he ever told Wentock that the fodder was well set up he said he did not remember that he did but if so he was talking there but was swearing now did not see Young Farthing with Ray he had Wooters subpoenaed to state Holoways conversation

Duncan testified that he was at trial heard the testimony of Wooters & Ray understood Wooters to refer to a conversation that he had heard between Holoway & Fowler did not hear all the evidence was not certain as to what was asked Wooters

Noah Wooters testified that he was present at the trial heard the evidence of Wooters heard him repeat a conversation between Holoway & Fowler. Did not hear all that was said.

heard no questions asked. Wooters as he
remembers
Samuel Gate testified that he was
present at the trial heard Wooters testi-
mony remembers that he referred to a
conversation that he had heard but does
remember questions that were put to Wooters
but does not remember all that was said
in the court his examination thinks
Greene asked Wooters what the corn was
worth and he said it was not worth much
when he saw it.

Phillips testified that he was at the trial
before Justice Lyke and heard Plaintiff &
Defendant ^{give} evidence they disputed about the
shock corn being ricked or shocked up.

Heard Plaintiff give in evidence a conversation
that he had heard between Holoway & Fowler
a short time before the trial. Did not know
all that was said by Plaintiff thinks there
was something said about the condition
of the fodder and its value when Wooters saw
it but can not recollect distinctly what was
said. This is all the evidence in the case.

Whereupon Plaintiff closed his rebutting
evidence and the Counsel for Plaintiff
and Defendant proceed to argue the
case before the jury and upon the close
of the argument. The Court instructed

16

The jury at the instance of the Plaintiffs
Counsel as follows—

(1) That if the Jury believe from the evidence
that any one set of the words in plffs
Declaration are proved to have been spoken
by Defendant or Plaintiff and that Defen-
dant charged Plaintiff with swearing falsely
upon a point material to the issue in the
suit between Fowler & Holway in the Justice's
Court they must find for Plaintiff (on
the first Count) unless they further believe
from the evidence Plaintiff was guilty
of willful and corrupt perjury given

(2) That to sustain a plea of Justification
for slanderous words imputing perjury
the same strictness of proof is necessary
as in a criminal prosecuting for perjury
and if from the evidence the Jury entertain
a reasonable doubt as to whether Defendant
has sustained his plea of Justification
Plaintiff is entitled to the benefit of that doubt given

(3) That if the Jury believe from the evidence
that Defendant has failed to sustain his
notice of Justification the Jury may con-
sider such notice in aggravation of damages given

Of the giving of each of said (three) instructions the Defendant by his Counsel then & there excepted and the Court gave the same after overruling exceptions &c

Whereupon the Defendant by his Counsel asked the Court to instruct the Jury as follows

1) The Jury are to weigh the testimony in this case and decide in favor of the party on whose side the evidence preponderates and in this connection the Court further instructs that the affirmative testimony of witnesses who swear that a certain thing (here the Court inserted "probable and natural") did occur or that certain things were said will greatly outweigh negative testimony of men who swear that they did not see or hear or remember that such facts or things were said or done - here the court added "but in this case the testimony on both sides was of the affirmative character & the Jury must decide which preponderates"

Given
To which insertion and addition to said first instruction the Defendant by his Counsel then and there excepted & the Court overruling exception gave the the instruction as modified

(2) The Court is asked, the Jury on the part of
 the Defendant that if they believe from the
 evidence that the Defendant at the time
 of making the charges alleged in the Decla-
 ration of Plaintiff and approved on the
 trial referred to a certain part of the
 testimony of Plaintiff given on a former
 trial and explained to the person to
 whom he made the charge the circum-
 stances under which he made the charge
 and in which the false swearing was charg-
 ed and made and they further believe
 from the evidence that the Defendant
 has made good his charge (see the
 Court inserted "that the plaintiff swore
 a lie") in the manner and under
 the circumstances made and under-
 stood then they should find the Defen-
 dant not guilty. To which said instruction
 the Defendant by his Counsel then & there
 excepted and the ^{Court} overruling exception
 gave the instruction as modified.
 Whereupon the Court proceeded orally
 to explain and qualify said instructions
 to the Jury. To which explanation
 and qualification orally the Defendant by
 his Counsel then and there excepted the
 Jury having considered the matter submitted

Returned into open Court the following
Verdict. We the Jury find the Defendant
guilty and assess the Plaintiffs damages
at Two hundred and seventy five Dollars

The Defendant by his Counsel then entered
a Motion in arrest of Judgment and for
a New Trial

And assigned as Causes for New Trial
that the Verdict of the Jury was
1st Contrary to the evidence

2^d That the Verdict was contrary to the Law
3^d That the Verdict of the Jury was contrary to
the Law and evidence

The Court overruled
the Motion in arrest of Judgment and for
a New Trial and entered Judgment upon
the Verdict of the Jury and to the ruling
of the Court the Defendant by his Counsel
then and there excepted and prayed
an Appeal to the Supreme Court &
it was granted

Sidney P. Beech Seal

And afterwards to wit on the 12th day of September
A^d 1857 the said defendant filed his appeal
bond in the words & figures following
viz;

20

August term of the Marion Circuit
Court for the year A D 1857

Josiah F. Wooley }
vs } Case for Slander
Jephtha Ray }
Jephtha Ray }

Know all men by these presents that we Jephtha Ray, Eliza Ray, Burl J. Crain, and Mary D. Ray of the County of Marion and State of Illinois are held and firmly bound unto Josiah F. Wooley of the County and State aforesaid in the penal sum of one thousand dollars lawful money of the United States and for the payment of said sum well and truly to be made we jointly and severally bind our selves our heirs and assigns firmly by these presents. witness our hands and seals this the fourth day of September eighteen hundred and fifty seven

The condition of the above obligation is such that whereas the said Josiah F. Wooley plaintiff in the above styled action died at the August term of the Marion County Circuit Court for the year eighteen hundred and fifty seven obtain a judgment in the above styled cause against the said Jephtha Ray for the sum of two hundred and seventy five dollars and costs of suit

and whereupon the said Jephtha Ray defendant
in said action did pray an appeal to the Supr-
eme Court of the State of Illinois and the
same was granted and time given to file
this bond. Now if the said Jephtha Ray
shall in good faith prosecute his said app-
eal in the Court aforesaid and pay and
satisfy the said judgement of the Circuit Court
in the event the same shall be affirmed in
the supreme Court aforesaid and all costs,
interest and damages that shall be awarded
against him, then the foregoing bond shall
be void otherwise to remain in full force

Given under our hands and
Seals the day and year aforesaid

Jephtha ^{his} Ray Seal
_{mark}

Elza Ray Seal

Bural ^{his} Grain Seal
_{mark}

Mary ^{his} Ray Seal
_{mark}

State of Illinois
Marion County } H. W. Cazan clerk of the Circuit
Court of said County do hereby certify the foregoing to be a
full, complete & correct transcript of the Records & proceedings
in the above entitled cause as appears by the Records &
proceedings in the same on file in my office

In testimony whereof I have hereunto
set my hand and affixed the seal of
said Court this 10th day of November 1857
H. W. Cazan cl^k

And since appellant claims as
key there is nonprobat error in
this record to wit

the court made in admitting improper
testimony for jury below

In refusing proper evidence
for left below

In giving improper instructions
for jury below

In qualifying & explaining
orally the instructions below

In refusing proper instructions for
left below

In promulgating illegal motion for
trial below & entering judgment
below to

By John & H. D. 1857

John D. 1857

H. D. 1857

Red 45 of 1857

And now the 1st. Byt in error cases &
say forcing of the cross above
alleges the 1st judgment on appeal
be reversed wherefore &c.

WKS Colver, Atty
D. 1857

37
Left the Case appellant
Union of 1800 to 1857
Appeal from
County

ABSTRACT.

JEPHTHA RAY, *Appellant*
 vs.
 JOSIAH F. WOOTERS, *Appellee.* } *Appeal from Marion.*

DECLARATION, Wooters, Plaintiff Below.

1 1st. Count charges the speaking of slanderous words, imputing the crime of perjury and actionable at common Law.

2 2ND, 3D, & 4TH. Counts, charge the speaking of slanderous words—imputing false swearing to Plaintiff below and actionable under the Statute.

3 General issue and two notices, 1 and 2 substantially the same. Notice that Defendant would prove that the words spoken of Plaintiff, were true—that he referred to the testimony on a part of the testimony of plaintiff, given on a trial before Justice J. A. Fike, in which Holoway and Fowler were parties, and the charge of swearing falsely was made in reference to that part of Plaintiff's testimony which related to the shocking or ricking corn fodder by the Defendant—that the person to whom the words were addressed understood them to refer to that portion of Plaintiff's testimony, which related to shocking corn fodder.

4 Jury and verdict for the Defendant, at the March term of the Court for 1857. Notice for new trial—allowed

5 Trial at the August term of the Court, 1857—jury and verdict for Wooters, for \$275. Motion for new trial overruled—excepted to—judgement for Wooters an verdict and appeal by Ray.

EVIDENCE OF WOOTERS.—Plaintiff.

6 1st witness—Elisha Fike, said he and Ray defendant took a walk while one jury was out in the case of Holoway & Fowler—that he seemed to be mad, and in referring to the testimony of Wooter's, Plaintiff, about the setting up of the shock corn. He said Joe Wooter's swore a d—m lie, and he could prove it. I can prove it—that HE, (meaning Plaintiff,) had sworn a d—m lie and I can prove it if he wants me to. Witness and Ray were talking about the testimony of Ray and Wooters, given about the siting up of the shock corn which was in controversy between Holloway and Fowler. Witness understood Ray to make the charge in reference to the testimony of Wooters about sitting up the corn.

7 Jehn P. Fike was present at the trial before Jonah A. Fike, but does not remember the testimony of Wooters or Ray—saw Ray a few days after the trial, and asked him why he got so mad on that day; he said Joe Wooters, (meaning the plaintiff,) swore a d—m lie, and he could prove it. Witness cautioned Ray about making such charge and he said Joe (meaning plaintiff) swore God d—m lie and he could prove it if he wanted him to—witness understood Ray to make the charge in reference to the testimony of Wooters about the setting up of shock corn on the trial before Justice Fike, in June 1855—Plaintiff closed his case.

8 Defendant then called the following witnesses. Thomas Farthing—who says that he helped Ray haul the fodder that was in controversy between Fowler and Holoway—there were three loads—helped Ray shock it up—it was well shocked up in Fowler's field in the fall of 1854—seen it afterwards, late in the Fall, it appeared to hold a good color.

9 L. Hall—says that he passed by and saw the shocked corn setting up in reasonable good order, and Holoway's place, he Fowler had been living there. The corn fodder looked as though there had been no rain on it after it had been shocked till he saw it.

10 Wm. Snider—says, he saw the shock corn in the fall of 1854, it was shocked or ricked in reasonable good order, but looked tangled when he saw it.

Deposition of William Englan—says he has known the parties for 19 years—was summoned and served as a juror on the trial between Haloway and Fowler. The dispute between the parties was about the destruction of corn fodder. Fowler sued Holoway for corn that he suffered to be destroyed on the place, and Holoway brought in an offset that Fowler's dogs, chickens, and geese had destroyed corn fodder that he had hauled and shocked up on his place. Wooters

was a witness for Fowler and Ray, was a witness for Holloway. In answer to a question of H. G. Bunon counsel in the cause which was: 'Had Holloway any corn then?' Wooters answered, that he had some corn hauled there and *thrown down in cross and pile every way*, making a motion with his left hand at the same time indicating the direction in which it was thrown. Witness remembers the evidence of Wooters because Ray the defendant was called to testify *immediately* after Wooters the Plaintiff, and Ray's evidence conflicted with that of Wooter's and because in a few days heard there was to be a suit of slander commenced about the matter and changed his mind with the testimony of Wooter's, expecting that he would be called as a witness in the suit. That sometime after the trial before the Justice pl'nt'ff, Wooters called upon witness to learn what he remembered about his testimony; witness told him that he *swore what he has above stated*, and Wooters made no reply; that Wooters said a great deal in his evidence and that after giving the above testimony he recited a conversation that he had heard a few days since before the trial between Holloway and Fowler—that the conversation detailed by Wooters was about the corn fodder in dispute.

11 James Harrison—was at the trial before Fike, and heard Plaintiff and Defendant testify. The controversy between Holloway and Fowler was this: Fowler had shocked fodder destroyed in the field, and Holloway had corn fodder destroyed which he had had hauled in the place—Wooters said, in giving his testimony that the fodder of Holloway's had been hauled and *thrown down* in the corner of the fence or field, *cross and pile* in every way—where Holloway did not tell Ray to put it. Witness remembered the testimony of Wooters, because Ray at the time whispered to him, and said, *that is not so*—that he had hauled the fodder and ricked it up, and Ray then got up and swore that he hauled the fodder and ricked it up—that Wooters got mad and said to Ray that he was too little to dispute his word when he was under oath; that after giving the testimony above, Wooters spoke of a conversation which he had heard between Holloway and Fowler.

12 William Bunday—was a juror on the trial before Fike—Wooters and Ray were witnesses—Wooters, testified that the fodder was hauled and thrown down. Ray testified that the fodder was set up—they got into a dispute about it—Wooters told Ray that he was too little to dispute his word—Witness remembered testimony of both, in the quarrel Ray said after giving his evidence, that that was the fact about it, and it was not as Wooters swore.

Wooters might have said something about a conversation at the time, or he might not rather thought he did—said a great deal about the case—Ray stated only in his evidence that the fodder had been set up.

13 Martin Adams—was a juror on the trial before Justice Fike. The controversy between Holloway and Fowler was about the destruction of fodder or shock corn; Wooters said in his testimony that the corn fodder had been hauled and *thrown down* in the corner of the fence, *cross and pile*—Wooters said much in his testimony about the case—that Ray was called as the next witness, and testified that he had hauled the corn fodder and sit it up—that Wooters had sworn that it was hauled and thrown down *cross and pile* which was not so—that Wooters then became mad, and told Ray that he was too little to dispute his word. Wooters after testifying as above, stated something about a conversation which he had heard between Holloway and Fowler a few days before the trial at Squire Fike's.

14 David Hall—was a juror on a trial before Fike—Wooters testified that the corn fodder of Holloway had been hauled and thrown down *cross and pile* in the corner of the fence—said much in giving his testimony—Remembered what Wooters said because Ray was called as a witness after Wooters, and testified that he had hauled and set up the corn fodder of Holloway. Wooters stated a conversation that had been previous to that—thought from Wooters testimony, that he had been there and seen the corn fodder—Wooters had spoken of a conversation before and was asked what was the condition of the corn fodder—that this statement, as witness believed was not connected with the conversation talk—and when asked, he first said it was hauled and thrown down over the fence *cross and pile* for the geese and dogs to destroy.

15 Richard Breese—was counsel in the trial before Fike—dispute about corn fodder—Witness asked Wooters as to the condition of the Holloway fodder—he said that

over
the corn fodder had been *thrown over the fence in a heterogeneous mass*, and had been *thrown of the fence cross and pile*, as it appeared to him—that the corn was not in a condition to keep. Ray was called to testify—he said Wooters need not say the fodder was hauled and thrown down cross and pile, for it was not so—he had hauled it and put it up in good style—then Wooters said Ray was too little to dispute his word, or oath. Wooters had passed through his examination in chief before witness got to the trial—he cross-examined him—heard no such chat as a conversation detailed, and would have remembered it if there had been any after he entered the trial. Wooters asked witness after he had him summoned as a witness for him, what he would swear in the case, and he told him that he would swear as above, and Wooters asked him if he would do him any good, he told him he thought not—Wooters then told him he might stay at home if he had anything to do.

- 16 William Holoway—was one of the parties in the suit before Squire Fike in June, 1855—controversy about corn fodder, was at trial—heard Wooters and Ray testify—Wooters said the corn fodder was hauled wadded up in *great wads and whalloped down cross pile*; Ray stated that he hauled and set up the fodder—Wooters and Ray disputed, and they grew mad and quareled—Wooters came with Fowler to see witness a few days before the suit at Fike's—Defendant here closed his case.

REBUTTING TESTIMONY OF PLAINTIFF.

- 17 Josiah A. Fike—Trial between Holoway and Fowler before him. Would not be distinct as to what Wooters testifies about the condition of the corn, but was distinct that he gave it as a recital of a conversation—Wooters stated that he had been present at a conversation between Holoway and Fowler, and as he closed Fowler said: Holoway my corn has also been destroyed, and you do not blame me—witness was not distinct as to what Wooters said about hauling his corn—he said it was not hauled *when* Holoway wanted it—he was then asked what his corn was worth, and he said the corn was worth but little if anything when he saw it. Wooters asked Holoway if it was not so, and he said it was—did not remember if Wooters made any statement as to the condition of the corn, did not remember that Wooters said the corn was in the corner of the fence or field. Holoway's offset filed about the time Breese came into the trial, and all that concerned the offset was after Breese came in.
- 18 — Bundy—was a juror, Wooters stated a great deal about a contract between Holoway and Fowler—recollected what he he heard pass between Holoway and Fowler a few days before the trial—Wooters says that Holoway said that Ray had hauled the corn and threw it down in a pile, when it was destroyed—Wooters was asked as to the condition of the corn when he saw it last—does not remember his reply, was not paying particular attention—Wooters after giving his evidence asked Holoway if he had not given his conversation correctly, and he nodded assent.
- 19 Isaac Bundy—says Breese came in while the trial was progressing and Wooters testifying—was asked the question by Breese, after detailing a conversation in what condition the corn was in and he said it looked like it had been hauled and thrown down cross and pile.
- Robert Sanders—was a juror in the trial before Fike—Wooters gave in evidence—a conversation talk—that Holoway said it had not been hauled *when* he wanted it, but had been hauled and piled in the yard, and chickens, geese and dogs had run over and destroyed it—Wooters then turned to Holoway and asked him if it was not so—he nodded assent—Breese asked Wooters as to the condition of the corn, and he said it was bad.
- 20 Joseph Fike—was present at the trial, Wooters states the contract between the parties, he was then asked if he had seen the corn, *said he had*, was asked what it was worth and he said very little, for it *was thrown down cross and pile* and dogs geese and chickens run over it; Wooters also gave a part of his evidence as a conversation, that Holoway said he did not blame Fowler, but the man who hauled the fodder and put in a place he did not tell him. Wooters was then asked by Defendant's counsel, to state as to the difficulty that arose between Ray and Wooters about the testimony and the court. The court would not permit the witness to answer the question, because it had been proved often enough. Defendant, by his counsel excepted to the rules of the court at

the time.

- 21 Thomas Phillips—was at trial before Fike and heard testimony of Wooters and Ray—Wooters repeated a conversation between Holoway and Fowler—Holoway said he did not blame Fowler—the corn was not put where he wanted it—does not remember that any question was asked Wooters—*thought* Wooters had stated the conversation before Breese came into the case. Is of the opinion that the question as to the condition of the corn was put to Wooters and he said it was down in a pile when he saw it—Ray got up and testified that it was not down in a pile but set up—Wooters said the corn was not hauled to the place where Holoway wanted it, and asked Holoway if it was not so, and he assented.
- 22 Drury Fowler—was one of the parties before Justice Fike—had Wooters supposed to prove Holoway's conversation—Wooters stated that Holoway said Ray had hauled the corn and thrown it down where he did not want it. After this evidence of conversation, he did speak of the value of the corn, he said it was torn down, not thrown down—Breese came into the trial after Wooters stated the conversation—could not remember that Breese asked Wooters as to the condition of the corn—corn was poorly set up—does not remember that he told McEntosh the corn was well set up—if so he was talking then—but swearing now.
- 23 Duncan was at the trial before Fike, heard testimony of Ray and Wooters—understood Wooters to refer to a conversation that he heard between Holoway and Fowler—did not hear all the evidence—was not certain as to what was asked Wooters.
- 24 Noah Wooters—was present at the trial before Fike—heard the evidence of Wooters, Plaintiff—heard him repeat a conversation between Holoway and Fowler—did not hear all that was said—remembers no questions asked.
- 25 Samuel Tate—was at trial before Fike, Wooters referred to conversation in his evidence between Holoway and Fowler, does not remember questions that were put, thinks Breese asked Wooters what the corn was worth, and he said little or nothing when he saw it.
- 26 Phillips—was at the trial before Fike and heard Ray and Wooters testify—they disputed about the corn being shocked or ricked up, Wooters stated a conversation which he had heard between Holoway and Fowler a short time before the trial, thinks there was something said about the condition and value of the corn when he saw it. Plaintiff closed his case.

PLAINTIFF'S INSTRUCTIONS.

- 27 1. That if the jury believe from the evidence that any one set of the words in Plaintiffs Declaration are proved to have been spoken by defendant of Plaintiff and that Defendant charged Plaintiff with swearing falsely upon a point material to the issue in the suit between Fowler and Holoway in the Justice's Court. They must find for the Plaintiff, (on the first count) unless they further believe from the evidence, Plaintiff was guilty of willful and corrupt perjury.
- 28 2. That to sustain a plea of justification for slander and words imputing perjury, The same strictness of proof is necessary as in criminal prosecution for perjury, and if from the evidence the jury entertain a reasonable doubt as to whether defendant has sustained his plea of justification, Plaintiff is entitled to the benefit of that doubt.
3. That if the jury believe from the evidence, that Defendant has failed to sustain his notice of Justification; the jury may consider such notice in aggravation of damages.
- 29 Defendant by his counsel at the time excepted to the giving of each and all, of said instructions of Defendant.
- 30 (1.) The Jury are to weigh the testimony in this case and decide in favor of the party on whose side the evidence preponderates and in this connection the court further instructed that the affirmative testimony of witnesses who swore that a certain thing, (here the court inserted,) "*probable and material,*" did occur, or that certain things were said will greatly outweigh negative testimony of men who swore that they did not see, or hear, or remember that such facts, or things were said or done, (here the court added,) "*But in this case the testimony on both sides, was of the affirmative character and the Jury must decide which preponderates.*" To which instruction and addition the defendant by his counsel at the time excepted.

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if they believe

Y. N. HAYNIE
SILAS L. BRYAN
ATTORNEYS AT LAW
Salem, Marion County, Ill.

31 (2.) The court is asked to instruct the Jury in the part of the defendant that of my belief from the evidence that the defendant at the time of making the charges alleged in the declaration of plaintiff and as proved on the trial referred to, a certain part of the testimony of plaintiff given in a former trial and explained to the persons to whom he made the charges, the circumstances under which and in which the false swearing was charged and made and may further belief from the evidence that the defendant has made good his charge, (here the court inserted) "that the plaintiff swore a lie," in the manner and under the circumstances that they should find the defendant not guilty--To which insertion the defendant at the time excepted--Court overruled exceptions and gave the instructions marked (1) and (2) as modified.

Court orally explained and qualified all of said instructions--Defendant excepted.

Errors assigned.

- 32 (1.) The Court admitted improper evidence for the plaintiff below.
- 33 (2.) Refusing proper evidence for defendant below.
- 34 (3.) Giving improper instructions for plaintiff below.
- 35 (4.) Modifying instructions of defendant below.
- 36 (5.) Refusing proper instructions for defendant below.
- 37 (6.) Overruling defendants motion for a new trial below, entering Judgement on the verdict of the Jury and refusing to grant a new trial.

I. N. HAYNIE, & }
SILAS L. BRYAN, } ATTORNEYS FOR APPELLANT.

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SILAS L. BRYAN, & }
I. N. HAYNIE, & }

on the right of the July and refusing to grant a new trial.
(1) Overruling defendant's motion for a new trial before entering judgment
(2) Refusing to give instructions for defendant's benefit.
(3) Modifying instructions of defendant below.
(4) Giving improper instructions for plaintiff's benefit.
(5) Refusing to give evidence for defendant.
(6) The Court admitted improper evidence.
Errors assigned.

I. N. HAYNIE, } Attorney's
SILAS L. BRYAN. } for
Appellant.

Register print, Salem, Illinois.]

Filed Dec. 1. 1857.
A. Johnston

ABSTRACT

JEPHTHA RAY, *Appellant*,
vs.
JOSIAH F. WOOTERS *Appellee*.

Appeal from Marion

SUPREME COURT, DECEMBER, 1857.

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Of the November Term of
the Supreme Court of Illinois
Josiah F. Wooters - plaintiff below
vs
Septa Ray - defendant below }
The Clerk } (appeal from
Champaign county)

You will please
advise the above entitled cause for
a hearing at the November Term for 1857

S. C. Bryan & J. A. Hays

Attys for Appellant

P.S. The defendant below is the
Appellant and plaintiff in this Court

S. C. Bryan & J. A. Hays

37
Jephtha Ray
pellant

vs
Joshua F. Wooster
pellee

Appeal from
Marion County

Filed 23rd October 1857

Noah Johnston clk
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JEPHTHA RAY, *Appellant*
vs.
 JOSIAH F. WOOTERS, *Appellee.* } *Appeal from Marion.*

**DECLARATION,
 Wooters, Plaintiff Below.**

1 1st. Count charges the speaking of slanderous words, imputing the crime of perjury and actionable at common Law.

2ND, 3D, & 4TH. Counts, charge the speaking of slanderous words—imputing false swearing to Plaintiff below and actionable under the Statute.

2 General issue and two notices, 1 and 2 substantially the same. Notice that Defendant would prove that the words spoken of Plaintiff, were true—that he referred to the testimony on a part of the testimony of plaintiff, given on a trial before Justice J. A. Fike, in which Holoway and Fowler were parties, and the charge of swearing falsely was made in reference to that part of Plaintiff's testimony which related to the shocking or ricking corn fodder by the Defendant—that the person to whom the words were addressed understood them to refer to that portion of Plaintiff's testimony, which related to shocking corn fodder.

3 Jury and verdict for the Defendant, at the March term of the Court for 1857. Notice for new trial—allowed

4 Trial at the August term of the Court, 1857—jury and verdict for Wooters, for \$275. Motion for new trial overruled—excepted to—judgement for Wooters an verdict and appeal by Ray.

EVIDENCE OF WOOTERS.—Plaintiff.

6 1st witness—Elisha Fike, said he and Ray defendant took a walk while one jury was out in the care of Holoway & Fowler—that he seemed to be mad, and in referring to the testimony of Wooter's, Plaintiff, about the setting up of the shock corn. He said Joe Wooter's swore a d—m lie, and he could prove it. I can prove it—that HE, (meaning Plaintiff,) had sworn a d—m lie and I can prove it if he wants me to. Witness and Ray were talking about the testimony of Ray and Wooters, given about the siting up of the shock corn which was in controversy between Hollowoy and Fowler. Witness understood Ray to make the charge in reference to the testimony of Wooters about sitting up the corn.

7 Jehn P. Fike was present at the trial before Jonan A. Fike, but does not remember the testimony of Wooters or Ray—saw Ray a few days after the trial, and asked him why he got so mad on that day; he said Joe Wooters, (meaning the plaintiff,) swore a d—m lie, and he could prove it. Witness cautioned Ray about making such charge and he said Joe (meaning plaintiff) swore God d—m lie and he could prove it if he wanted him to—witness understood Ray to make the charge in reference to the testimony of Wooters about the setting up of shock corn on the trial before Justice Fike, in June 1855—Plaintiff closed his case.

Defendant then called the following witnesses.

8 Thomas Farthing—who says that he helped Ray haul the fodder that was in controversy between Fowler and Holoway—there were three loads—helped Ray shock it up—it was well shocked up in Fowler's field in the fall of 1854—seen it afterwards, late in the Fall, it appeared to hold a good color.

9 L. Hall—says that he passed by and saw the shocked corn setting up in reasonable good order, and Holoway's plan, he Fowler had been living there. The corn fodder looked as though there had been no rain on it after it had been shocked till he saw it.

Wm. Snider—says, he saw the shock corn in the fall of 1854, it was shocked or ricked in reasonable good order, but looked tangled when he saw it.

10 Deposition of William Englan—says he has known the parties for 19 years—was summoned and served as a juror on the trial between Haloway and Fowler. The dispute between the parties was about the destruction of corn fodder. Fowler sued Holoway for corn that he suffered to be destroyed on the place, and Holoway brought in an offset that Fowler's dogs, chickens, and geese had destroyed corn fodder that he had hauled and shocked up on his place. Wooters

was a witness for Fowler and Ray, was a witness for Holoway. In answer to a question of H. G. Bunon counsel in the cause which was: 'Had Holoway any corn then? Wooters answered, that he had some corn hauled there and *thrown down in cross and pile every way*, making a motion with his left hand at the same time indicating the direction in which it was thrown. Witness remembers the evidence of Wooters because Ray the defendant was called to testify *immediately* after Wooters the Plaintiff, and Ray's evidence conflicted with that of Wooter's and because in a few days heard there was to be a suit of slander commenced about the matter and changed his mind with the testimony of Wooter's, expecting that he would be called as a witness in the suit. That sometime after the trial before the Justice pl'nt'ff, Wooters called upon witness to learn what he remembered about his testimony; witness told him that he *swore what he has above stated, and Wooters made no reply*; that Wooters said a great deal in his evidence and that after giving the above testimony he recited a conversation that he had heard a few days since before the trial between Holoway and Fowler—that the conversation detailed by Wooters was about the corn fodder in dispute.

11 James Harrison—was at the trial before Fike, and heard Plaintiff and Defendant testify. The controversy between Holoway and Fowler was this: Fowler had shocked fodder destroyed in the field, and Holloway had corn fodder destroyed which he had had hauled in the place—Wooters said, in giving his testimony that the fodder of Holoway's had been hauled and *thrown down in the corner of the fence or field, cross and pile in every way*—where Holoway did not tell Ray to put it. Witness remembered the testimony of Wooters, because Ray at the time *whispered to him, and said, that is not so*—that he had hauled the fodder and ricked it up, and Ray then got up and swore that he hauled the fodder and ricked it up—that Wooters got mad and said to Ray that he was too little to dispute his word when he was under oath; that after giving the testimony above, Wooters spoke of a conversation which he had heard between Holoway and Fowler.

12 William Bunday—was a juror on the trial before Fike—Wooters and Ray were witnesses—Wooters, testified that the fodder was hauled and thrown down. Ray testified that the fodder was set up—they got into a dispute about it—Wooters told Ray that he was too little to dispute his word—Witness remembered testimony of both, in the quarrel Ray said after giving his evidence that that was the fact about it, and it was not as Wooters swore.

Wooters might have said something about a conversation at the time, or he might not rather thought he did—said a great deal about the case—Ray stated only in his evidence that the fodder had been set up.

13 Martin Adams—was a juror on the trial before Justice Fike. The controversy between Holloway and Fowler was about the destruction of fodder or shock corn; Wooters said in his testimony that the corn fodder had been hauled and *thrown down* in the corner of the fence, *cross and pile*—Wooters said much in his testimony about the case—that Ray was called as the next witness, and testified that he had hauled the corn fodder and sit it up—that Wooters had sworn that it was hauled and thrown down *cross and pile* which was not so—that Wooters then became mad, and told Ray that he was too little to dispute his word. Wooters after testifying as above, stated something about a conversation which he had heard between Holoway and Fowler a few days before the trial at Squire Fike's.

14 David Hall—was a juror on a trial before Fike—Wooters testified that the corn fodder of Holoway had been hauled and thrown down *cross and pile* in the corner of the fence—said much in giving his testimony—Remembered what Wooters said because Ray was called as a witness after Wooters, and testified that he had hauled and set up the corn fodder of Holloway. Wooters stated a conversation that had been previous to that—thought from Wooters testimony, that he had been there and seen the corn fodder—Wooters had spoken of a conversation before and was asked what was the condition of the corn fodder—that this statement, as witness believed was not connected with the conversation talk—and when asked, he first said it was hauled and thrown down over the fence *cross and pile* for the geese and dogs to destroy.

15 Richard Breese—was counsel in the trial before Fike—dispute about corn fodder—Witness asked Wooters as to the condition of the Holoway fodder—he said that

the corn fodder had been *thrown over the fence in a heterogeneous mass*, and had been *thrown off the fence cross and pile*, as it appeared to him—that the corn was not in a condition to keep. Ray was called to testify—he said Wooters need not say the fodder was hauled and thrown down cross and pile, for it was not so—he had hauled it and put it up in good style—then Wooters said Ray was too little to dispute his word, or oath. Wooters had passed through his examination in chief before witness got to the trial—he cross-examined him—heard no such chat as a conversation detailed, and would have remembered it if there had been any after he entered the trial. Wooters asked witness after he had him summoned as a witness for him, what he would swear in the case, and he told him that he would swear as above, and Wooters asked him if he would do him any good, he told him he thought not—Wooters then told him he might stay at home if he had anything to do.

16 William Holoway—was one of the parties in the suit before Squire Fike in June, 1855—controversy about corn fodder, was at trial—heard Wooters and Ray testify—Wooters said the corn fodder was hauled wadded up in *great wads and whalloped down cross pile*; Ray stated that he hauled and set up the fodder—Wooters and Ray disputed, and they grew mad and quareled—Wooters came with Fowler to see witness a few days before the suit at Fike's—Defendant here closed his case.

REBUTTING TESTIMONY OF PLAINTIFF.

17 Josiah A. Fike—Trial between Holoway and Fowler before him. Would not be distinct as to what Wooters testifies about the condition of the corn, but was distinct that he gave it as a recital of a conversation—Wooters stated that he had been present at a conversation between Holoway and Fowler, and as he closed Fowler said: Holoway my corn has also been destroyed, and you do not blame me—witness was not distinct as to what Wooters said about hauling his corn—he said it was not hauled when Holoway wanted it—he was then asked what his corn was worth, and he said the corn was worth but little if anything when he saw it. Wooters asked Holoway if it was not so, and he said it was—did not remember if Wooters made any statement as to the condition of the corn, did not remember that Wooters said the corn was in the corner of the fence or field. Holoway's offset filed about the time Breese came into the trial, and all that concerned the offset was after Breese came in.

18 — Bundy—was a juror, Wooters stated a great deal about a contract between Holoway and Fowler—recollected what he heard pass between Holoway and Fowler a few days before the trial—Wooters says that Holoway said that Ray had hauled the corn and threw it down in a pile, when it was destroyed—Wooters was asked as to the condition of the corn when he saw it last—does not remember his reply, was not paying particular attention—Wooters after giving his evidence asked Holoway if he had not given his conversation correctly, and he nodded assent.

19 Isaac Bundy—says Breese came in while the trial was progressing and Wooters testifying—was asked the question by Breese, after detailing a conversation in what condition the corn was in and he said it looked like it had been hauled and thrown down cross and pile.

Robert Sanders—was a juror in the trial before Fike—Wooters gave in evidence—a conversation talk—that Holoway said it had not been hauled when he wanted it, but had been hauled and piled in the yard, and chickens, geese and dogs had run over and destroyed it—Wooters then turned to Holoway and asked him if it was not so—he nodded assent—Breese asked Wooters as to the condition of the corn, and he said it was bad.

20 Joseph Fike—was present at the trial, Wooters states the contract between the parties, he was then asked if he had seen the corn, *said he had*, was asked what it was worth and he said very little, for it was *thrown down cross and pile* and dogs geese and chickens run over it; Wooters also gave a part of his evidence as a conversation, that Holoway said he did not blame Fowler, but the man who hauled the fodder and put in a place he did not tell him. Wooters was then asked by Defendant's counsel, to state as to the difficulty that arose between Ray and Wooters about the testimony and the court. The court would not permit the witness to answer the question, because it had been proved often enough. Defendant, by his counsel excepted to the rules of the court at

the time.

21 Thomas Phillips—was at trial before Fike and heard testimony of Wooters and Ray—Wooters repeated a conversation between Holoway and Fowler—Holoway said he did not blame Fowler—the corn was not put where he wanted it—does not remember that any question was asked Wooters—*thought* Wooters had stated the conversation before Breese came into the case. Is of the opinion that the question as to the condition of the corn was put to Wooters and he said it was down in a pile when he saw it—Ray got up and testified that it was not down in a pile but set up—Wooters said the corn was not hauled to the place where Holoway wanted it, and asked Holoway if it was not so, and he assented.

22 Drury Fowler—was one of the parties before Justice Fike—had Wooters supposed to prove Holoway's conversation—Wooters stated that Holoway said Ray had hauled the corn and thrown it down where he did not want it. After this evidence of conversation, he did speak of the value of the corn, he said it was torn down, not thrown down—Breese came into the trial after Wooters stated the conversation—could not remember that Breese asked Wooters as to the condition of the corn—corn was poorly set up—does not remember that he told McEntosh the corn was well set up—if so he was talking then—but swearing now.

23 Duncan was at the trial before Fike, heard testimony of Ray and Wooters—understood Wooters to refer to a conversation that he heard between Holoway and Fowler—did not hear all the evidence—was not certain as to what was asked Wooters.

24 Noah Wooters—was present at the trial before Fike—heard the evidence of Wooters, Plaintiff—heard him repeat a conversation between Holoway and Fowler—did not hear all that was said—remembers no questions asked.

25 Samuel Tate—was at trial before Fike, Wooters referred to conversation in his evidence between Holoway and Fowler, does not remember questions that were put, thinks Breese asked Wooters what the corn was worth, and he said little or nothing when he saw it.

26 Phillips—was at the trial before Fike and heard Ray and Wooters testify—they disputed about the corn being shocked or ricked up, Wooters stated a conversation which he had heard between Holoway and Fowler a short time before the trial, thinks there was something said about the condition and value of the corn when he saw it. Plaintiff closed his case.

PLAINTIFF'S INSTRUCTIONS.

27 1. That if the jury believe from the evidence that any one set of the words in Plaintiffs' Declaration are proved to have been spoken by defendant of Plaintiff and that Defendant charged Plaintiff with swearing falsely upon a point material to the issue in the suit between Fowler and Holoway in the Justice's Court. They must find for the Plaintiff, (on the first count) unless they further believe from the evidence, Plaintiff was guilty of willful and corrupt perjury.

28 2. That to sustain a plea of justification for slander and words imputing perjury. The same strictness of proof is necessary as in criminal prosecution for perjury, and if from the evidence the jury entertain a reasonable doubt as to whether defendant has sustained his plea of justification, Plaintiff is entitled to the benefit of that doubt.

3. That if the jury believed from the evidence, that Defendant has failed to sustain his notice of Justification; the jury may consider such notice in aggravation of damages.

29 Defendant by his counsel at the time excepted to the giving of each and all, of said instructions of Defendant.

30 (1.) The Jury are to weigh the testimony in this case and decide in favor of the party on whose side the evidence preponderates and in this connection the court further instructed that the affirmative testimony of witnesses who swore that a certain thing, (here the court inserted,) "*probable and material,*" did occur, or that certain things were said will greatly outweigh negative testimony of men who swore that they did not see, or hear, or remember that such facts, or things were said or done, (here the court added,) "*But in this case the testimony on both sides, was of the affirmative character and the Jury must decide which preponderates.*" To which instruction and addition the defendant by his counsel at the time excepted.

31 (2.) The court is asked to instruct the Jury in the part of the defendant that of my belief from the evidence that the defendant at the time of making the charges alleged in the declaration of plaintiff and as proved on the trial refused to, a certain part of the testimony of plaintiff given on a former trial and explained to the persons to whom he made the charges, the circumstances under which and in which the false swearing was charged and made and my further belief from the evidence that the defendant has made good his charge, (here the court inserted) "that the plaintiff swore a lie," in the manner and under the circumstances that they should find the defendant not guilty—To which insertion the defendant at the time excepted—Court overruled exceptions and gave the instructions marked (1) and (2) as modified.

Court orally explained and qualified all of said instructions—Defendant excepted.

Errors assigned.

- 32 (1.) The Court admitted improper evidence for the plaintiff below.
33 (2.) Refusing proper evidence for defendant below.
34 (3.) Giving improper instructions for plaintiff below.
35 (4.) Modifying instructions of defendant below.
36 (5.) Refusing proper instructions for defendant below.
37 (6.) Overruling defendant's motion for a new trial below, entering Judgment on the verdict of the Jury and refusing to grant a new trial.

I. N. HAYNIE, & }
SILAS L. BRYAN, } ATTORNEYS FOR APPELLANT.

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ABSTRACT.

JEPHTHA RAY, Appellant,
vs.
JOSIAH F. WOOTERS Apelee.

Appeal from Marion.

SUPREME COURT, DECEMBER, 1857.

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SILAS L. BRYAN. } Appellant.**

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